828.

SUPREME COURT OF THE UNITED STATES.

No. 164.

LEWIS CURTIS AND GEORGE GRISWOLD, TRUSTEES OF THE APALACHICOLA LAND COMPANY, APPELLANTS,

vs.

JOHN AND JAMES INERARITY.

APPEAL FROM THE COURT OF APPEALS FOR THE TERRITORY OF FLORIDA.

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Pleas at the court house in the city of Tallahassee, before the honorable the court of appeals for the Territory of Florida, on the first day of September, in the year one thousand eight hundred and forty-four, and of the independence of the United States of America the sixty-ninth year.

Be it remembered that heretofore, to wit, on the day of A. D. came Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company, and filed in this honorable court the record of their appeal from a judgment of the superior court of the western district of Florida, sitting in chancery in and for the county of Escambia, which said record is in the words and figures following, to wit:

"Pleas before the honorable the judge of our superior court of West Florida, at a regular term of said court begun and held at the court-house, in the city of Pensacola, on the first Monday in November, A D. 1841, and of the independence of the United States the sixty-sixth.

"Be it remembered that heretofore, to wit, on the twenty-ninth day of November, A. D. 1837, came John Carnochan, Peter Mitchel, Louis McClane, Charles Augustus Davis, and Joseph M. White, by their solicitor, and filed their bill of complaint, which is in the words and figures following, to wit:

To the superior court of the district of West Florida in chancery sitting:

The complainants John Carnochan and Peter Mitchel, formerly co-partners under the firm and style of Carnochan and Mitchel, of the city of Savannah, in the State of Georgia, and Louis McLane, of the city of Baltimore, esquire, Charles Augustus Davis, of the city of New York, merchant, and Joseph M. White, of counsellor at law, respectfully represent:

That in the years one thousand eight hundred and seventeen, eighteen, and nineteen, one Colin Mitchel, formerly of Havana, in the Island of Cuba, for himself and as trustee for the said Carnochan and Mitchel, made a contract for the purchase of a large tract of land in Florida from the late John Forbes, which said tract of land, situated on and between the rivers Apalachicola and Saint Marks, in the then Spanish province of Florida, known by the name of Forbes' purchase, which said tract is said to contain one million two hundred thousand acres more or less, saving and excepting various parcels of said tract previously sold and conveyed to other individuals, amounting in the aggregate *the* thirteen thousand five hundred and eighty acres; and also saving and excepting therefrom one island only, in the Apalachicola river, called Forbes' island. That the consideration of the said purchase of the said tract of land by the said Colin Mitchell, of the said John Forbes as aforesaid, was the sum of one hundred and eleven thousand *dollars* and six hundred and seventy-six dollars and twenty-five cents. That before the

consummation of said contract by the execution of the necessary and legal conveyances to transfer the title to said tract of land to said Colin Mitchel, it was discovered that John Innerarity, of the city of Pensacola, and James Innerarity, of the city of Mobile, were entitled to, and were the owners in fee of, one undivided fifteenth part of said tract of land so as aforesaid contracted to be sold by the said John Forbes to the said Colin Mitchel, they the said John Innerarity and James Innerarity, each owning an undivided thirtieth part thereof. That on the twenty-ninth day of May, one thousand eight hundred and nineteen, Don Carlos Reggio, the attorney in fact of said John Forbes, executed at Pensacola a deed of conveyance to the said Colin Mitchel of said tract of land herein above described, in consideration of the sum of one hundred and eleven thousand six hundred and seventy-six dollars and twenty-five cents, but reserving, in addition to the exceptions and reservations above made, as follows: "Excepting nevertheless, and separating from the said tract of land, an undivided fifteenth part owned in two thirtieth parts by John and James Innerarity.

The complainants further represent, that the original contract of purchase made by the said Colin Mitchel with the said John Forbes, comprehended and included all of said tract of land herein above mentioned, excepting and reserving as herein first above mentioned, and that the exceptions and reservations herein first above mentioned were the only exceptions and reservations made or intended to be made by said John Forbes in the sale of the said tract of land to the said Colin Mitchel as aforesaid; and that excepting and reserving as herein first above mentioned, all of said tract of land, all right and interest in and title to said tract of land, was contracted to be sold, and was sold, by said John Forbes to the said Colin Mitchel for the sum of one hundred and eleven thousand six hundred and seventy-six dollars and twenty-five cents as aforesaid.

The complainants further represent, that the said John Forbes had not any right or title to the said undivided two thirtieths of said tract of land so claimed as aforesaid by said John Innerarity and James Innerarity, nor any power and authority to sell the same; and that the said Colin Mitchel, in order to complete and perfect his title to the said tract of land so as aforesaid contracted to be sold, and actually sold, to him by the said John Forbes, was compelled to purchase, and did actually purchase, of the said John Innerarity and James Innerarity their right, title, and interest of, in, and to said undivided two thirtieths as follows, to wit: On the twenty-ninth day of May, one thousand eight hundred and nineteen, the said Colin Mitchel purchased of said John Innerarity one of said undivided thirtieth parts for the consideration of ten thousand dollars. And on the fourth day of August, one thousand eight hundred and nineteen, the said Colin Mitchel purchased of said James Innerarity the other one of said undivided thirtieth parts for the consideration of the sum of eight thousand two hundred dollars, as by the respective deeds of conveyance of the same, reference being thereto had if necessary, will fully appear.

The complainants further represent, that the said John Forbes disco-

vered and admitted his error and mistake in contracting to sell, and in actually selling, to the said Colin Mitchel as aforesaid the said tract of land, and including in said contract and sale the two undivided thirtieth parts thereof so as aforesaid owned by said John Innerarity and James Innerarity, and to correct and rectify the said error and mistake the said John Forbes agreed to repay a part of said consideration of one hundred and eleven thousand six hundred and seventy-six dollars and twenty-five cents, which had already been paid, and to deduct from the balance of said consideration, remaining due and unpaid, a further sum, which said sum so to be repaid and deducted should be equivalent to the deficiency of title of the said John Forbes in said tract of land in consequence of the claim and title of the said John Innerarity and James Innerarity to said undivided two thirtieth parts as aforesaid. That, in pursuance of the said arrangement, the said John Forbes ordered his agent in London to refund of said consideration money already paid to said John Forbes, the sum of eleven hundred and twenty-five pounds sterling, equal to five thousand dollars, which was paid to the complainants by James S. Potts, the agent of the said John Forbes, leaving a balance still to be paid by the said John Forbes, or to be deducted out of the next or further payments on account of said consideration of one hundred and eleven thousand six hundred and seventy-six dollars and twenty-five cents thereafter to become due; that the said John Forbes, in a letter addressed by him to his agent, the said James S. Potts, dated on the eighth day of December, one thousand eight hundred and nineteen, admitted that two sums of three hundred and seventy-five pounds sterling each were to be deducted or refunded by the said John Forbes of the balance of said consideration money, in addition to the eleven hundred and twenty-five pounds sterling refunded prior to that time by the said John Forbes as aforesaid. These complainants, however, always insisted, and still claim and insist, that another and a third sum of three hundred and seventy-five pounds sterling was to be deducted or refunded by the said John Forbes of the balance of the said consideration money; which said three sums of three hundred and seventy-five pounds sterling amounted *amounted* to the sum of eleven hundred and twenty-five pounds sterling, equal to five thousand dollars, and which the complainants allege and insist was to be deducted or refunded by the said John Forbes in addition to said sum of five thousand dollars actually refunded by him to the complainants through his agent, the said James S. Potts, above mentioned.

The complainants further represent, that the conveyance of said tract of land so as aforesaid executed by the said Carlos Reggio, as the attorney of the said John Forbes, on the twenty-ninth day of May, one thousand eight hundred and nineteen, was to the said Colin Mitchel individually, he being a Spanish subject, and the said tract of land being situate within the then Spanish territory; that said Colin Mitchel received said conveyance partly for himself, but principally as trustee for these complainants and others, cestui que trusts, and beneficial owners of the greater portion of said tract of land; that in the month of September, one thousand eight hundred and twenty, it was deemed advisable by the

persons interested in said property, that the trustee should be changed, and that thereupon the legal title to said property was by a deed or deeds of conveyance, in due form of law, transferred and passed from said Colin to Octavius Mitchel, who thereupon became substituted in the place and stead of the said Colin Mitchel, as by the said deeds of conveyance in the record office of Pensacola, reference being thereunto had if necessary, will fully appear.

The complainants further represent, that at the time of the transfer and conveyance of the legal title of said tract of land from the said Colin Mitchel to the said Octavius Mitchel as aforesaid, and his substitution as aforesaid, there remained due and owing of the said consideration money of one hundred and eleven thousand six hundred and seventy-six dollars and twenty-five cents, the sum of twenty-five thousand dollars, payable in two equal instalments of twelve thousand five hundred dollars each, the one payable the eighth day of December, one thousand eight hundred and twenty, and the other payable the eighth day of December, one thousand eight hundred and twenty-one, payable in London; that to secure the payment of the said sum of twenty-five thousand dollars to the said John Forbes, and the former owners of said land, and in fulfilment of the original contract between said John Forbes and the said Colin Mitchel, the said Octavius Mitchel executed a mortgage of the said tract of land to the said John Forbes, bearing date on or about the thirteenth day of September, one thousand eight hundred and twenty, conditioned to pay the said sum of twenty-five thousand dollars, in two equal instalments as aforesaid, as by a reference to the said mortgage, or the record thereof now remaining in the record office of Pensacola, will fully appear.

The complainants further represent, that the instalments which became due as aforesaid, on the eighth day of December, one thousand eight hundred and twenty, was the sum of twelve thousand five hundred dollars, equal to two thousand eight hundred and twelve pounds ten shillings sterling, and was payable in London at the par of four shillings and sixpence to the dollar. That out of this instalment was to be deducted said two sums of three hundred and seventy-five pounds sterling each, which said John Forbes admitted as above mentioned, in his letter of the 8 day of December, 1819, to his agent James S. Potts, were to be deducted from the balance due of said consideration money; and also the like sum of three hundred and seventy-five pounds sterling, which the complainants allege and insist was also to be deducted from the balance due of said consideration money, making an aggregate sum so to be deducted of eleven hundred and twenty-five pounds sterling, equal to, say, five thousand dollars. That through some mistake or neglect on the part of Colin Mitchell, he, the said Colin Mitchel, gave to the said John Forbes his bill of exchange drawn on William Mitchel, in London, in favor of said John Forbes, for the sum of two thousand eight hundred and twelve pounds ten shillings sterling, being the full amount of said instalment so as aforesaid due, on the eighth day of December, one thousand eight hundred and twenty, without deducting said

sum of eleven hundred and twenty-five pounds sterling, or any part or portion thereof. That said bill of exchange was not paid, but was returned protested to said John Forbes.

The complainants further represent, that soon after the return of said protested bill of exchange, and in or about the month of May, one thousand eight hundred and twenty-two, the said John Forbes departed this life at Matanzas, in the Island of Cuba, after having first duly made and published his last will and testament, and therein and thereby appointed Edmund Depestre and Francis Dalcourt, of the said Island of Cuba, the executors thereof; and that said Edmund Depestre and Francis duly proved said will, and took upon themselves the burthen of the execution thereof. The complainants further represent, that William Panton, formerly of the city of Pensacola, and Thomas Forbes, formerly of the Island of New Providence, were interested in said tract of land so as aforesaid sold by said John Forbes to the said Colin Mitchel, as part owners thereof, but the extent of their several and individual interests these complainants are unable to state. That the said William Panton died within the government of the Bahama Islands, in the year one thousand eight hundred and one, after having first duly made and published his last will and testament, and therein and thereby appointed among others the said John Forbes and James Innerarity the executors thereof, and that the said will was duly proved, and letters testamentary duly issued thereon to the said John Forbes and James Innerarity, on the fifth day of August, one thousand eight hundred and twelve.

That the said Thomas Forbes died at the Island of New Providence, in the Bahama Islands, some time in the year one thousand eight hundred and eight, after having first duly made and published his last will and testament, and therein and thereby appointed his brother the said John Forbes, and his son William Henry Forbes, executors thereof, who duly proved the said will and took upon themselves the burthen of the execution thereof.

The complainants further represent, that the said John Forbes, in the sale of the said tract of land to the said Colin Mitchel as aforesaid, acted on his own behalf and as executor of the said William Panton and Thomas Forbes, and as representative of the rights and interests of all the parties concerned in the said tract of land.

The complainants further represent, that after the death of the said John Forbes as aforesaid, the said Edmund Depestre and Francis Dalcourt, his executors as aforesaid, upon due investigation became satisfied that the penultimate instalment of said consideration, being the sum of twelve thousand five hundred dollars, due on the eighth day of December, one thousand eight hundred and twenty, and for which the said bill of two thousand eight hundred and ten pounds twelve shillings sterling, was so as aforesaid drawn by the said Colin Mitchel in favor of said John Forbes, and returned protested as aforesaid; and also, the last instalment of said consideration money, being the sum of twelve thousand five hundred dollars, due the eighth day of December, one thousand

eight hundred and twenty one, did not nor did any part thereof belong in point of fact to the said John Forbes, and that they had no equitable or just claim to the same as his representatives; but that said two instalments, and said protested bill given for one of said instalments, belonged to the estates of the said Thomas Forbes, deceased, and the said William Panton, deceased, as and for the respective shares and interests of the said Thomas Forbes and William Panton, of, in, and to the said tract of land so as aforesaid sold, by the said John Forbes, to the said Colin Mitchell. And the said Edmund Depestre and Francis Dalcourt, executors of the said John Forbes aforesaid, positively refused to receive payment of the said protested bill of exchange, or to have any thing to do with the same, alleging that said bill of exchange in truth and in fact belonged to the estates of the said Thomas Forbes and the said William Panton, and that to their representatives payment of the said bill must be made.

The complainants further represent, that William H. Forbes, the son and executor of the said Thomas Forbes as aforesaid, demanded and required of the said Colin Mitchel payment to him, the said William H. Forbes, of the one-half of the amount due on the said protested bill, being the proportion of said bill belonging and in fact due and payable to the estate of his father the said Thomas Forbes as aforesaid; that inasmuch as the said executors of the said John Forbes, in whose favor the bill was drawn, had refused to receive payment of the same or any part thereof, and had disclaimed all right to the moneys due on the same, alleging as aforesaid that the said bill and the moneys due thereon did not belong to the estate of the said John Forbes, but belonged in truth and in fact to the estates of the said William Panton and of the said Thomas Forbes, and upon the faith of the said disclaimer and allegation of the said executors of the said John Forbes, and in consequence of such disclaimer and of such allegation, and not otherwise, he, the said Colin Mitchel, on the eleventh day of October, one thousand eight hundred and twenty-three, paid to the said William H. Forbes, executor of the said Thomas Forbes as aforesaid, one-half the amount then due on the said protested bill, being the sum of seven thousand eight hundred and forty-one dollars and one cent, as by the receipt of the said William H. Forbes to the said Colin Mitchel for the same, bearing date the said eleventh day of October, one thousand eight hundred and twenty-three, reference being thereunto had if necessary, will fully appear.

The complainants further represent, that James Innerarity, now of Mobile, in the State of Alabama, the sole executor of the said William Panton, and attorney in fact of the heirs of said William Panton, demanded and required of the said Colin Mitchel payment to him, the said James Innerarity, of the other half of the amount due on said protested bill, being the proportion of said bill belonging and in fact due and payable to the estate of the said William Panton as aforesaid. That in consequence of the refusal of the executors of said John Forbes as aforesaid to receive payment of the said protested bill, and of their disclaimer and allegation above mentioned, and not otherwise, the said Colin Mit-

chel paid to the said James Innerarity, as executor and attorney as aforesaid, on the half of the protested bill so as aforesaid due the estate of the said William Panton, deceased, as follows, to wit, the sum of two thousand six hundred and eighty dollars and eighty-one cents, on the thirteenth day of May, one thousand eight hundred and twenty-three; and the further sum of two thousand and eighty-seven dollars and eighty-seven cents, on the fifteenth day of February, one thousand eight hundred and twenty-five, leaving due and owing on the said bill on the day of the sum of , which was the true balance then due on the said protested bill of exchange. That in the month of January last past, these defendants caused the said James Innerarity to be informed by the said Colin Mitchel, that these complainants were ready and willing to pay the said balance due on said protested bill, as soon as a proper discharge could be entered on the said mortgage in the record office of Pensacola, for said instalment of twelve thousand five hundred dollars, or two thousand eight hundred and twelve pounds ten shillings sterling, being the penultimate instalment of said consideration money of said purchase, due on the eighth day of December, one thousand eight hundred and twenty, and for which said protested bill was drawn as aforesaid.

The complainants further represent, that they are willing and anxious, and hereby offer to pay, the last instalment of said consideration money of said purchase, due on the eighth day of December, one thousand eight hundred and twenty-one, being the sum of twelve thousand five hundred dollars, and interest at five per cent. from said eighth day of December, one thousand eight hundred and twenty-one, with the difference of exchange on London as originally agreed upon between the said Colin Mitchel and the said John Forbes, after deducting the said sum of one thousand one hundred and twenty-five pounds sterling, so to be deducted as above mentioned, on account of the failure of the title of the said John Forbes to said two undivided thirtieth parts of said tract of land, as soon as a proper discharge of said mortgage can be obtained, which will authorize a satisfaction of said mortgage to be entered on the records of Pensacola.

These complainants further represent, that the said Francis Dalcourt and Edmund Depestre, executors of the said John Forbes as aforesaid, having for many years refused, for the reasons above mentioned, to interfere in any way with the said mortgage, or to have any thing to do with the same, or to receive any moneys due thereon; and these complainants, and said Colin Mitchel, being very anxious and desirous to have the amount due on said mortgage ascertained and adjusted, and to have said mortgage paid off and discharged of record, these complainants and the said Colin Mitchel requested one Thomas Baltzell, of Florida, to take out letters of administration on the estate of the said John Forbes through the courts of Florida. That afterwards, the said John Innerarity applied for letters of administration on the estate of said John Forbes, and they were in due form of law granted him by the competent authority in Florida.

The complainants further represent, that since the said John Innerarity has been so as aforesaid appointed administrator of the estate of the said John Forbes, these complainants and the said Colin Mitchel have repeatedly applied to the said John Innerarity, as administrator as aforesaid, for a fair settlement and adjustment of the amount due on the said mortgage, with this fair and reasonable request, that he would allow and deduct from the same the said several sums so as aforesaid paid by the said Colin Mitchel to the said William H. Forbes, executor of the said Thomas Forbes, and to the said James Innerarity, executor of the said William Panton; and also the said sum of one thousand one hundred and twenty-five pounds sterling, to be deducted as above mentioned on account of the failure of the title of the said John Forbes to said two undivided thirtieth parts of said tract of land; and these complainants hoped, that the said John Innerarity would have complied with these reasonable requests, he the said John Innerarity well knowing from his connection with all the parties, and being in fact a party himself as owner of one of said undivided thirtieth parts, that the requests of these complainants and the said Colin Mitchell were reasonable, equitable, and just.

These complainants further represent that the said John Innerarity, administrator of the said John Forbes as aforesaid, contrary to justice and good faith, claims that there is due on the said mortgage about the sum of fifty-seven thousand seven hundred and ninety dollars and eighteen cents, and refuses to allow thereon, or to deduct therefrom, the said sums of money so as aforesaid paid on the said protested bill, by the said Colin Mitchell to the said William H. Forbes, executor of the said Thomas Forbes, deceased, and to the said James Innerarity, the executor of the said William Panton, deceased, or to allow or to deduct therefrom the said sum of one hundred and twenty-five pounds sterling, so to be deducted as above mentioned, on account of the failure of the title of the said John Forbes to the said two undivided thirtieth parts of said tract of land, unless these complainants will allow to the said John Innerarity an exorbitant charge of fifteen per cent. on the whole amount of said two last instalments, for difference of exchange, and also interest thereon at the rate of seven per cent., with other illegal charges; and in any event refuses to allow to these complainants more than one of the said sums of three hundred and seventy-five pounds sterling.

These complainants further represent, that the legal title of all the parties interested in said tract of land so as aforesaid purchased by the said Colin Mitchell of the said John Forbes, deceased, has in due form of law been conveyed to the said complainants, Louis McLane, Charles Augustus Davis, and Joseph M. White, as trustees for the said complainants, John Carnochan and Peter Mitchel, and other cestui que trusts.

But now so it is, that the said John Innerarity, combining and confederating with the said William H. Forbes and the said James Innerarity, and with divers other persons at present unknown to these complainants, (whose names, when discovered, these complainants pray may

be inserted in this their bill of complaint, with proper and apt words to charge them as parties thereto,) to injure and aggrieve the complainants in the premises, pretend that the said Colin Mitchel never purchased of the said John Forbes the said tract and parcel of land upon the terms and for the consideration of one hundred and eleven thousand six hundred and seventy-six dollars and twenty-five cents, herein above in that behalf mentioned, and that said purchase and said consideration paid therefor, never included, or was intended to include and convey, the entire interest and the entire and unincumbered fee, of, in, and to said tract of land; but that said two undivided thirtieth parts of said tract of land were intended to be excepted, and were excepted, in the contract so as aforesaid made between the said Colin Mitchel and the said John Forbes, the contrary whereof your complainants expressly charge to be true; and they further charge that the said John Forbes, immediately upon the discovery by him that he had contracted to sell and convey to the said Colin Mitchel a full and absolute title to said tract of land herein above mentioned, and that he, the said John Forbes, was not possessed, in his own right, or in the right of those he represented, of so full and absolute title to the same, but that the right, title, and interest of the two undivided thirtieth parts thereof, belonged to and was vested in the said John Innerarity and James Innerarity, expressly agreed to refund and deduct from said consideration money a sum equivalent to two-thirtieth parts of said tract of land, to which his title had failed as aforesaid, and that in pursuance of said agreement the said John Forbes did refund to the said complainants the sum of eleven hundred and twenty-five pounds sterling, as above mentioned, and did direct his agent to deduct from the accruing payments, on said consideration money, two sums of three hundred and seventy-five pounds sterling each; and though the said confederates sometimes admit the correctness of the deduction of one of said sums of three hundred and seventy-five pounds, claimed by your complainants, yet they refuse to allow a further deduction of the other two sums of three hundred and seventy-five pounds sterling each, which the complainants insist is also to be deducted from the balance of said consideration money, for the reasons aforesaid.

Again, the said confederates at times pretend that the said Francis Dalcourt and Edmund Depestre, executors of the said John Forbes, deceased, never refused to receive payment of said protested bill of exchange, nor alleged that the same was honestly and justly due to the estates of the said Thomas Forbes, deceased, and the said William Panton, deceased, and never authorized the complainants, or the said Colin Mitchel, to pay said protested bill of exchange to the legal representatives of the said Thomas Forbes and William Panton deceased, and that the complainants never paid to the said William H. Forbes, executor of the said Thomas Forbes, deceased, or to the said James Innerarity, executor of the said William Panton, deceased, the said sums herein above in that behalf mentioned, the contrary whereof these complainants charge to be true.

All which actings, doings, and pretences, are contrary to equity and

good conscience, and tend to the manifest wrong and injury of the complainants. In tender consideration whereof, and inasmuch as the complainants are remediless in the premises by the strict rules of the common law, and can only obtain relief in a court of equity, where matters of this nature are properly cognizable and relievable; to the end, therefore, that the said John Innerarity, William H. Forbes, and James Innerarity, and their confederates when discovered, may, upon their several and respective corporate oaths, true, full, direct, and perfect answer make to all and singular the matters herein stated and charged, and that as fully and particularly as if the same were here repeated, and they and each of them thereto severally and specially interrogated; and that they shall so answer, not only to the best of their respective knowledge and remembrance, but also to the best of their several and respective hearsay information and belief.

And that the said John Innerarity, James Innerarity, and William H. Forbes, or one or some of them, may be decreed to receive the balance due on said protested bill as aforesaid, and also the amount due on the last instalment of said consideration money as aforesaid; and that they, or one or some of them, upon payment of the same, may be decreed to execute and deliver to these complainants a full and complete satisfaction and discharge of said mortgage, so as aforesaid recorded in the record office of Pensacola, executed and acknowledged in due form of law, to procure the discharge of said tract of land from all and any lien thereon, for or on account of said mortgage. And that the complainants may have such further or other relief in the premises as the nature of their case may require, and as shall be agreeable to equity.

And that the said John Innerarity, administrator of the said John Forbes, deceased, his attorneys, solicitors, counsellors and agents, may be restrained, by an injunction out of this court, from proceeding to collect or foreclose said mortgage until the amount due thereon shall be ascertained and adjusted by the decree and order of this court, and that the said John Innerarity, administrator of the said John Forbes, as aforesaid, may also be restrained from assigning or transferring the said mortgage to any person or persons, until the further order of this court.

May it therefore please the court to grant to the complainants a writ of injunction, issuing out of and under the seal of the court, to be directed to the said John Innerarity, administrator of the said John Forbes, deceased, his attorneys, solicitors, counsellors, and agents, restraining them as herein above prayed, and also process to be directed to the said John Innerarity, William H. Forbes, and James Innerarity, commanding [them] and each of them by a certain day to be and appear before this court, and then and there to answer the premises, and further, to stand to, abide by, and perform such order and decree therein as shall be agreeable to equity and good conscience.

JOHN CARNOCHAN,
PETER MITCHEL.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

On this eleventh day of November, 1837, before me, William H.

Maxwell, commissioner for the State of New York, by virtue of an act of the legislature of the Territory of Florida, passed January 4, 1831, duly authorized to take depositions and administer oaths to be used in said Territory, personally appeared John Carnochan and Peter Mitchel, named in the within bill of complaint, who being by me duly sworn according to law, did severally depose and say, that they had read the foregoing bill and knew the contents thereof, and that the same is true of their own knowledge, except as to the matters therein stated to be on their information or belief, and that as to those matters they believe it to be true.

In testimony whereof, I have hereunto subscribed my name and af-
[SEAL.] fixed my seal of office the day and year above written.

WM. H. MAXWELL,
Florida Commissioner.

"Filed Nov. 29, 1837."
"Issue spa. in chancery. WHITE, *Solicitor.*"

In the name of the Territory of Florida, to John Innerarity, William H. Forbes, and James Innerarity, greeting:

You are hereby commanded and strictly enjoined, that laying all other business aside, and notwithstanding any excuse, you personally be and appear before the judge of our superior court for the district of West Florida, on the first day of our next term, wherever the court may then be, to answer a bill of complaint exhibited against you in our said court by John Carnochan, Peter Mitchel, Louis McLane, Charles Augustus Davis, and Joseph M. White, and to do further receive what our said court shall have considered in that behalf, and this you are not to omit, under a penalty of five hundred dollars.

Witness the honorable John A. Cameron, judge of the said court the
[SEAL.] thirtieth day of April, in the year of our Lord one thousand eight hundred and thirty-eight.

WM. W. J. KELLY, *Clerk.*

Return.

Received April, 1838.—Executed the within by sending it to John Innerarity the 16 April, 1838.

PETER W. GAUTIER, *Marshal.*
By HENRY J. WIGGINS, *D. M.*

And at another day, to wit, on the twenty-fourth day of November, in the year one thousand eight hundred and thirty-eight, (1838,) came James Innerarity and filed his answer to the foregoing bill of complaint, which answer is in the words and figures following, to wit:

The answer of James Innerarity to the bill of complaint of John Carnochan and Peter Mitchel, formerly merchants trading under the firm of Carnochan and Mitchel, and of Louis McLane, Charles A. Davis, and Joseph M. White, trustees of the Apalachicola Land Company.

This respondent, saving and reserving to himself all manner of benefit of exception to the numerous errors, imperfections, and uncertainties in

said bill contained, for answer thereto, or to so much thereof as he is advised it is material for him to answer, answereth and saith: that what this respondent can answer to is, that about the *the* beginning of December, eighteen hundred and seventeen, an agreement, duplicate one of which ought to be in the hands of complainants, for a sale of two-thirds of the land in question, known as Forbes' purchase, was made between John Forbes, acting as the executor of William Panton and Thomas Forbes, to which estates the said two-thirds belonged, (one-third to each,) and Colin Mitchel, of the city of Havana, for the sum of sixty-six thousand six hundred and sixty-six dollars 66⅔, ($66,666 66⅔ cents,) saving and excepting from the said sale certain specified tracts of land that had been previously disposed of as mentioned in their bill of complaint, and also saving and excepting therefrom a certain island in the Apalachicola river, within the limits of the tract, known as Forbes island, situated in the eastern side of the main stream of Apalachicola river, about thirty-five miles, more or less, from the mouth of the river; which island lies north of the tract marked D, and west of that laid down as the Old Cow-pen on the engraved map of the land, its upper end being about six miles, and its lower extremity about eleven miles south, inclining westwardly or south southwest, in a straight line, by the said map, from and below the place called by me, and known as Panton's cliffs, and which island this respondent well knows, and that it was included in the original cession by the Seminole Indians, which cession this respondent negotiated.

And this respondent further declares, that this island, so described and situated as before mentioned, was and is totally different and distinct from another island called by the complainants Forbes' island in the map aforesaid, (engraved, as this respondent believes, under the direction of complainants or of Colin Mitchel,) which latter island is situated on the west side of the main stream of Apalachicola river, opposite to Fort Gadsden or Cottenton, and extending some miles below it—which island was not comprehended in the limits of the first cession by the Seminole Indians; nor had the said William Panton or Thomas Forbes, or their heirs, any right or title to it whatever, but it was a private gift by those Indians to John Forbes, in his individual capacity, and a regular deed was made to him for the same; therefore, being his own private property, and forming no part of the ceded land in which the estates of William Panton and Thomas Forbes were interested, it could form no part, nor be the subject of a reserve out of them; but that the island herein first mentioned and described, was and is the one intended to be reserved out of the tract sold, whereas the latter mentioned island was never included in the tract, and was never contemplated at all in the bargain.

This respondent further saith, that the said price of sixty-six thousand six hundred and sixty-six dollars 66⅔ [cts.,] equivalent, at 4.6 sterling to the dollar, to £15,000 sterling, was agreed to be paid in London, at that rate, in the manner following, viz: One-fourth part, or three thousand seven hundred and fifty pounds sterling, on the first day of May,

eighteen hundred and eighteen, and the balance in four equal instalments of two thousand eight hundred and twelve pounds ten shillings each, on the eighth day of December, eighteen hundred and eighteen and nineteen, eighteen hundred and twenty and twenty-one.

This respondent further saith, that James and John Innerarity were entitled to one-fifth part of the share of the said estate of the said William Panton in the said lands between them, or to one-tenth part of the two shares of the said William Panton and Thomas Forbes; that John Forbes did, by the agreement aforesaid, undertake to sell to the said Colin Mitchel their share of interest in the said lands, along with those of the other heirs of the said Panton, at the above mentioned price, and on the same terms of payment—consequent for the sum of fifteen hundred pounds sterling and no more—being one-fifth of the whole sum for which he sold the general interest of that estate; that the said James and John Innerarity, on being fully informed of the transaction, and of certain particular transactions to them only interesting, and not deemed necessary to be herein recited, attached to it, which was not till some time in the year 1819, did dissent therefrom for themselves; that, thereupon, the said Colin Mitchel, of his own free will and accord, did make a separate and distinct agreement with the said James and John Innerarity, and did buy from them their respective shares of interest in said land, for the sums specified and alleged to have been paid for the same respectively in the complainants' bill, and which this respondent for his part admits to be correct; that thereby the said John Forbes became liable to the said Colin Mitchel for any sum that he might have received in the interim, or that he might thereafter receive from him, the said Colin, for or on account of the shares of the said James and John Innerarity; but he could not be liable, even if the whole had been paid, (which was not the case, as will hereafter appear,) for any thing more than the sum of fifteen hundred pounds sterling, that being the whole amount of the interest of the said James and John Innerarity in the land bargained to be sold as before stated by him, the said John Forbes.

This respondent further answering saith, that in conformity with the agreement hereinbefore mentioned between the said John Forbes and the said Colin Mitchel, the three first payments were made to the said Forbes by the said Mitchel, for the two one-third shares of interest in the lands belonging to the estates of the said William Panton and Thomas Forbes, viz: in May, 1818, the sum of £3,750 sterling; in December, 1818, the further sum of £2,812 10*s.* sterling; and in December, 1819, the further sum of £2,812 10*s.* sterling, which was the whole that was paid thereon or therefor to him, making a total of nine thousand three hundred and seventy-five pounds sterling, whereof one half was on account of, and for the estate of, William Panton, viz: four thousand six hundred and eighty-seven pounds 10*s.* sterling; thus—

Estate of W. Panton,	half of the first instalment	-	£1,875 00 0
Do.	half of second do	-	1,406 5 0
Do.	half of third do	-	1,406 5 0
			£4,687 10 0

said bill contained, for answer thereto, or to so much thereof as he is advised it is material for him to answer, answereth and saith: that what this respondent can answer to is, that about the *the* beginning of December, eighteen hundred and seventeen, an agreement, duplicate one of which ought to be in the hands of complainants, for a sale of two-thirds of the land in question, known as Forbes' purchase, was made between John Forbes, acting as the executor of William Panton and Thomas Forbes, to which estates the said two-thirds belonged, (one-third to each,) and Colin Mitchel, of the city of Havana, for the sum of sixty-six thousand six hundred and sixty-six dollars 66⅔, ($66,666 66⅔ cents,) saving and excepting from the said sale certain specified tracts of land that had been previously disposed of as mentioned in their bill of complaint, and also saving and excepting therefrom a certain island in the Apalachicola river, within the limits of the tract, known as Forbes island, situated in the eastern side of the main stream of Apalachicola river, about thirty-five miles, more or less, from the mouth of the river; which island lies north of the tract marked D, and west of that laid down as the Old Cow-pen on the engraved map of the land, its upper end being about six miles, and its lower extremity about eleven miles south, inclining westwardly or south southwest, in a straight line, by the said map, from and below the place called by me, and known as Panton's cliffs, and which island this respondent well knows, and that it was included in the original cession by the Seminole Indians, which cession this respondent negotiated.

And this respondent further declares, that this island, so described and situated as before mentioned, was and is totally different and distinct from another island called by the complainants Forbes' island in the map aforesaid, (engraved, as this respondent believes, under the direction of complainants or of Colin Mitchel,) which latter island is situated on the west side of the main stream of Apalachicola river, opposite to Fort Gadsden or Cottenton, and extending some miles below it—which island was not comprehended in the limits of the first cession by the Seminole Indians; nor had the said William Panton or Thomas Forbes, or their heirs, any right or title to it whatever, but it was a private gift by those Indians to John Forbes, in his individual capacity, and a regular deed was made to him for the same; therefore, being his own private property, and forming no part of the ceded land in which the estates of William Panton and Thomas Forbes were interested, it could form no part, nor be the subject of a reserve out of them; but that the island herein first mentioned and described, was and is the one intended to be reserved out of the tract sold, whereas the latter mentioned island was never included in the tract, and was never contemplated at all in the bargain.

This respondent further saith, that the said price of sixty-six thousand six hundred and sixty-six dollars 66⅔ [cts.,] equivalent, at 4.6 sterling to the dollar, to £15,000 sterling, was agreed to be paid in London, at that rate, in the manner following, viz: One-fourth part, or three thousand seven hundred and fifty pounds sterling, on the first day of May,

eighteen hundred and eighteen, and the balance in four equal instalments of two thousand eight hundred and twelve pounds ten shillings each, on the eighth day of December, eighteen hundred and eighteen and nineteen, eighteen hundred and twenty and twenty-one.

This respondent further saith, that James and John Innerarity were entitled to one-fifth part of the share of the said estate of the said William Panton in the said lands between them, or to one-tenth part of the two shares of the said William Panton and Thomas Forbes; that John Forbes did, by the agreement aforesaid, undertake to sell to the said Colin Mitchel their share of interest in the said lands, along with those of the other heirs of the said Panton, at the above mentioned price, and on the same terms of payment—consequent for the sum of fifteen hundred pounds sterling and no more—being one-fifth of the whole sum for which he sold the general interest of that estate; that the said James and John Innerarity, on being fully informed of the transaction, and of certain particular transactions to them only interesting, and not deemed necessary to be herein recited, attached to it, which was not till some time in the year 1819, did dissent therefrom for themselves; that, thereupon, the said Colin Mitchel, of his own free will and accord, did make a separate and distinct agreement with the said James and John Innerarity, and did buy from them their respective shares of interest in said land, for the sums specified and alleged to have been paid for the same respectively in the complainants' bill, and which this respondent for his part admits to be correct; that thereby the said John Forbes became liable to the said Colin Mitchel for any sum that he might have received in the interim, or that he might thereafter receive from him, the said Colin, for or on account of the shares of the said James and John Innerarity; but he could not be liable, even if the whole had been paid, (which was not the case, as will hereafter appear,) for any thing more than the sum of fifteen hundred pounds sterling, that being the whole amount of the interest of the said James and John Innerarity in the land bargained to be sold as before stated by him, the said John Forbes.

This respondent further answering saith, that in conformity with the agreement hereinbefore mentioned between the said John Forbes and the said Colin Mitchel, the three first payments were made to the said Forbes by the said Mitchel, for the two one-third shares of interest in the lands belonging to the estates of the said William Panton and Thomas Forbes, viz: in May, 1818, the sum of £3,750 sterling; in December, 1818, the further sum of £2,812 10*s.* sterling; and in December, 1819, the further sum of £2,812 10*s.* sterling, which was the whole that was paid thereon or therefor to him, making a total of nine thousand three hundred and seventy-five pounds sterling, whereof one half was on account of, and for the estate of, William Panton, viz: four thousand six hundred and eighty-seven pounds 10*s.* sterling; thus—

Estate of W. Panton,	half of the first instalment	-	£1,875 00 0
Do.	half of second do	-	1,406 5 0
Do.	half of third do	-	1,406 5 0
			£4,687 10 0

Now the respondent can neither admit nor deny the allegation in the complainants' bill, that the said John Forbes did, in a letter to his agent Potts, in London, of 8 December, 1819, order him to repay to Messrs. Carnochan and Mitchel the sum of £375 sterling, three hundred and seventy-five pounds sterling, on each of those three instalments; and that he ordered him moreover to repay to them an equal sum out of each of the two ulterior instalments, that he might then naturally suppose would be duly paid at maturity. But this respondent can truly, and doth say, that if he gave such order, for or on account of the unsatisfied bargain or sale of the Innerarity shares, he committed a great error against himself, these shares being for one-fifth part of the whole interest of the Panton estate, as already mentioned, the repayments ought only to have been—

On the first instalment as above, of £1,875, one-fifth	-	£375	00 0
On the second do of £1,406 5 one-fifth	-	281	05 0
On the third do of £1,406 5 one-fifth	-	281	05 0
		£937	10 0

Say in all nine hundred and thirty-seven pounds ten shillings sterling, being one fifth part of the whole sum of £4,687 10*s.* sterling, that he had actually received on account of the whole of the Panton shares. But whereas the complainants have confessed, in their bill, that they actually did receive the said three sums of three hundred and seventy-five pounds sterling each, making in all the sum of eleven hundred and twenty-five pounds, it is perfectly evident that they have received three-fourths of the whole sum that they had a right to claim, and that only one-fourth part more, or £375, remains to be deducted to make up the whole amount, exclusive of the interest, of £1,500, fifteen hundred pounds, for which the said John Forbes had bargained the shares of the Inneraritys; for it cannot, and this deponent thinks it will not, be contended that a sale, even under warrantee, (and in this instance there was none,) by a party whose title fails, renders that party liable to the purchaser for any further sum than the amount paid, with interest.

This respondent further answering saith, that the mortgage granted by Octavius Mitchel, and mentioned in the complainants' bill, in the month of September, 1820, was intended to secure the two last payments then running to maturity, (viz: the instalment falling due *the* on the eighth day of December, 1820, and 8 December, 1821,) and belonging to the heirs of the estates of William Panton and Thomas Forbes, and none other, a fact admitted and mentioned to this respondent by the said Colin Mitchel, who, in conformity, paid to this respondent the sum of money that will be hereinafter stated, in part of the amount ($25,000 or £5,625 10*s.* sterling) secured by the same, and of the protested bill of exchange mentioned in the complainants' bill, and hereinafter also referred to.

This respondent further saith, that the whole of that sum, ($25,000,) five thousand six hundred and twenty-five pounds sterling, was then (viz: at the date of the mortgage) properly running to maturity, according to the shewing of complainants in their bill; because, in the year

previous, the said John Forbes in his letter to his agent in London, Potts, as stated by them, the complainants, had already ordered him, the said Potts, to repay to them three several sums of three hundred and seventy-five pounds sterling each, out of the three first payments by them made, which three sums, amounting to the sum of £1,125 sterling, they admit that they had received; and because, as they also state, the said Forbes, in his said letter, had also ordered Potts to repay, out of the ulterior instalments, (expected to be paid.) two further sums of three hundred and seventy-five pounds each, on the same account, viz: on account of the failure of his bargain for the Innerarity shares, which, as this respondent has already shewn, was three hundred and seventy-five pounds sterling too much, inasmuch as only one repayment (viz: that on the first instalment) of £375 sterling ought to have been ordered or made, and four others of £281 5*s.* each, out of the amount of the four subsequent instalments, when the same should be paid in full; these five sums making that of fifteen hundred pounds sterling, the amount of the Innerarity's shares, according to the bargain for the same which failed.

This respondent further saith, that not through any mistake or neglect, as the complainants allege, but in fulfilment of the original agreement, a bill of exchange for one-half of the twenty-five thousand dollars, viz: for two thousand eight hundred and twelve pounds and ten shillings sterling, being the amount of the fourth instalment, was given by the said Colin Mitchel to the said John Forbes, drawn on William Mitchel, of London, payable in December, 1820, was not paid by the said William Mitchel, but was returned under protest, as the complainants stated in their bill.

This respondent further saith, that the said bill for the fourth instalment, for the security of which, and the subsequent fifth and ultimate instalment, the aforesaid mortgage was given, has not been paid, but still remains due and owing, with the damages, interest, &c., thereon; as also the said fifth and ultimate instalment of £2,812 10*s.*, two thousand eight hundred and twelve pounds ten shillings sterling, which was due and payable in London, on the 8 December, eighteen hundred and twenty-one, but which has not been paid, and therefore remains still owing, together with the interest thereon, and premium of exchange to place the same in London; saving and excepting, however, from these two sums, making together the sum of £5,625, five thousand six hundred and twenty-five pounds sterling, or at the rate of four shillings and sixpence per dollar, twenty five thousand dollars, with interest, and damages, and exchange as aforesaid, the following moneys, which have been received on account and on part thereof, viz: by this respondent from Colin Mitchel, on the 31 May, 1823, the sum of two thousand six hundred and eighty dollars 81 cents, and on the fifteenth of February, 1825, the further sum of two thousand and eighty dollars 87½ cents, making together the sum of four thousand seven hundred and sixty-eight dollars sixty-eight and three-quarter cents, which sums were paid to him as the executor of William Panton, and with the interest thereon, are to be deducted from the half share of the heirs of the said William Panton,

in the two aforesaid unsatisfied instalments; as likewise is to be deducted from the same the sum of three hundred and seventy-five pounds sterling, that will be still remaining owing the complainants on account of the overcharge arising from the failure of the bargain for the Innerarity's shares as hereinbefore shown. This respondent leaves it to the court to decide according to law, to equity, and to mercantile usage and custom, on the damages on the protested bill, the exchange, rate of interest, and other charges to be borne and paid by the complainants, in view of the long period that they have enjoyed the money in this country, which ought to have been paid in London.

This respondent further answering saith, that he has understood from William H. Forbes that he had, some time in the year 1823, received from the aforesaid Colin Mitchell the amount that he claimed on account of the interest or share belonging to himself, his brother and sister, in the said protested bill, but as to the particular time when, or amount so received, this respondent cannot speak.

This respondent further answering saith, that the complainants are in error in stating that Edmund Depestre is an executor of John Forbes; that the executors of the said John were his natural daughter Sophia, and her husband, Francis Dalcourt, the said Depestre having an interest in the estate of the said Forbes only in right of his wife Juana, another natural daughter of the said Forbes.

This respondent further answering, admits, that he is the surviving executor of the late William Panton, and attorney in fact of his heirs; and, as such, claims that the balances that may be adjusted as owing to that estate, according to the statements herein given, be paid either to himself or the administrator of the estate of John Forbes, to be paid over to this respondent for their use and benefit.

This respondent having answered, traversed, or denied all that it is material for him to answer, prays that he may be here dismissed with his reasonable costs in this behalf most wrongfully sustained.

BLOUNT, *Sol'r pro respondent.*

James Innerarity maketh oath that the several matters and things contained in the foregoing answer of his own knowledge are true, and those not of his own knowledge he believes to be true.

JAMES INNERARITY.

Sworn to, and subscribed, before the undersigned, commissioner of Florida, authorized to take acknowledgements of deeds, to administer oaths, and take answers in chancery, for the territory of Florida, the 20th Nov'r, 1838.

BEN. BUT. BURDIN,
Commissioner.

Endorsed: "Filed 24*th* Nov'r, 1838."

JOHN CARNOCHAN, Peter Mitchel, Louis McLane, Charles A. Davis, and Joseph M. White, compl'ts,
versus
JOHN INNERARITY, William H. Forbes, and James Innerarity, def'ts.
} Nov. 26, 1838.—In chancery.

This day came the complainants by their counsel; and it appearing to the satisfaction of the court, upon affidavit filed, that William H. Forbes does not reside in the Territory of Florida, it is therefore ordered, that unless he appear here on or before the first Monday of May next, and answer the complainants' bill of complaint filed herein, the same will be taken for confessed as to said William H. Forbes, and the matters and things therein contained decreed accordingly; and it is further ordered, that a copy of this order be published in the Pensacola Gazette, once a week, for four months successively; and it is further ordered that this cause be continued.

And at another day, to wit, on the thirteenth day of December, 1838, came John Innerarity, and filed his answer to the foregoing bill of complaint filed herein against him; which answer is in the words and figures following, to wit:

The answer of John Innerarity, administrator of John Forbes, deceased, to the bill of complaint of John Carnochan and Peter Mitchell, formerly copartners under the firm and style of Carnochan and Mitchel, of the city of Savannah, in the State of Georgia, and Louis McLane, Charles Augustus Davis, and Joseph M. White. This respondent, saving and reserving to himself all manner of benefit of exception to the numerous errors, imperfections, and uncertainties in the said complainants' bill contained, for answer thereto, or so much thereof as he is advised it is material for him to answer, answereth and saith: That what this respondent can answer to is, that, about the beginning of December, eighteen hundred and seventeen, an agreement in duplicate, one of which ought to be in the hands of complainants, for as sale of two-thirds of the land in question, known as Forbes' purchase, was made between John Forbes, acting as the executor of the estates of William Panton and Thomas Forbes, to which estates the said two-thirds belonged, (one-third to each,) and Colin Mitchel, of the city of Havanna, for the sum of sixty-six thousand six hundred and sixty-six dollars and sixty-six $\frac{2}{3}$ cents—$66,666 66$\frac{2}{3}$ cents—saving and excepting from the said sale certain specified tracts of land that had been previously disposed of as mentioned in their bill of complaint; and also saving and excepting therefrom a certain island in the Apalachicola river within the limits of the tract, known as Forbes' island, situated on the eastern side of the main stream of the Apalachicola river, about thirty-five miles, more or less, from the mouth of the river; which island lies north of the tract marked D, and west of that laid down as the Old Cowpen, on the engraved map of the land, its upper end being about six miles, and its lower extremity about eleven miles south, inclining westwardly or south

southwest on a straight line by the said map from and below the place called, by James Innerarity, and known as Panton's cliffs, and which island this respondent knows; and that it was included in the original cession by the Seminole Indians, which cession James Innerarity negotiated; and this respondent further declares that this island, so described and situated as before mentioned, was and is totally different and distinct from another island called by the complainants Forbes island on the map aforesaid, (engraved, as this respondent believes, under the direction of complainants, or of Colin Mitchel,) which last island is situated on the west side of the main stream of Apalachicola river, opposite to Fort Gadsden or Cottenton, and extending some miles below it; which island was not comprehended in the limits of the first cession by the Seminole Indians, nor had the said William Panton or Thomas Forbes, or their heirs, any right or title to it whatever; but it was a private gift by those Indians to the said John Forbes in his individual capacity, and a regular deed was made to him for the same; therefore, being his own private property, and forming no part of the ceded land in which the estates of William Panton and Thomas Forbes were interested, it could form no part, nor be the subject of a reserve out of them; but that the island herein first mentioned and described was, and is, the one intended to be reserved out of the tract sold; whereas the latter mentioned island was never included in the tract, and was never contemplated at all in the bargain.

This respondent further saith, that the said price of sixty-six thousand six hundred and sixty-six dollars 66⅔ cents, equivalent, at 4.6 sterling to the dollar, to £15,000 sterling, was agreed to be paid in London at that rate in the manner following, namely: One-fourth part, or three thousand seven hundred and fifty pounds sterling, on the first day of May, in the year eighteen hundred and eighteen, and the balance in four equal instalments of two thousand eight hundred and twelve pounds ten shillings each, on the 8th day of December, in the years eighteen hundred [and] eighteen, eighteen hundred and nineteen, eighteen hundred and twenty, and eighteen hundred and twenty-one.

This respondent further saith, that James Innerarity and himself were entitled to one-fifth part of the share of the said estate of the said William Panton in the said lands between them, or one-tenth part of the two shares of the said William Panton and Thomas Forbes. That John Forbes did, by the agreement aforesaid, undertake to sell to the said Colin Mitchel their share of interest in the said lands, along with those of the other heirs of the said Panton, at the above mentioned price, and on the same terms of payment; consequently, for the sum of fifteen hundred pounds sterling, and no more, being one-fifth of the whole sum for which he sold the general interest of that estate. That the respondent and the said James Innerarity, on being fully informed of the transaction, and of certain particular circumstances to them only interesting, and not deemed necessary to be herein recited, attached to it, which was not till some time in the year 1819, did dissent therefrom for themselves. That thereupon the said Colin Mitchell, of his own free will and accord,

did make a separate and distinct agreement with the said James Innerarity and this respondent, and did buy from them their respective shares of interest in the said land for the sums specified and alleged to have been paid for the same, respectively, in the complainants' bill, and which this respondent for his part admits to be correct. That thereby the said John Forbes became liable to the said Colin Mitchell for any sums that he might have received in the interim, or that he might thereafter receive from him, the said Colin, for or on account of the shares of the said James Innerarity and this respondent, but he could [not] be liable, even if the whole had been paid, (which was not the case, as will hereafter appear) for any thing more than the sum of fifteen hundred pounds sterling, that being the whole amount of the interest of the said James Innerarity and this respondent in the land bargained to be sold, as before stated, by him, the said John Forbes.

This respondent further answering saith, that in conformity with the agreement hereinbefore mentioned between the said John Forbes and the said Colin Mitchell, the three first payments were made to the said John Forbes by the said Mitchel for the two one-third shares of interest in the land belonging to the estates of the said William Panton and Thomas Forbes, viz: in May, 1818, the sum of £3,750 st'g; in December, 1818, the further sum of £2,812 10s. sterling; and in December, 1819, the further sum of £2,812 10s. sterling, which was the whole that was paid thereon or therefor to him, making a total of nine thousand three hundred and seventy-five pounds sterling, whereof one-half was on account of and for the estate of William Panton, viz: four thousand six hundred and eighty-seven pounds 10s. sterling, thus:

Estate of William Panton,	half of first instalment	-	£1,875	0	0
" "	half of second "	-	1,406	5	0
" "	half of third "	-	1,406	5	0
			£4,687	10	0

Now this respondent can neither admit nor deny the allegations in the complainants' bill, that the said John Forbes did, in a letter to his agent, Potts, in London, of 8 December, 1819, order him to repay to Messrs. Carnochan & Mitchel the sum of three hundred and seventy-five pounds sterling on each of those three instalments, and that he ordered him moreover to repay to them an equal sum out of each of the two ulterior instalments, that he might then naturally suppose would be duly paid at maturity; but this respondent can truly, and doth say, that if he gave such orders for or on account of the unratified bargain or sale of the Innerarity's' shares, he committed a great error against himself, these shares being only of one-fifth part of the whole interest of the Panton estate, as already mentioned, the repayments ought only to have been—

On the first instalment,	as above, of	£1,875	0	One fifth -	£375	0	0
On the second do	as above,	£1,406	5	" -	281	5	0
On the third do	as above,	£1,406	5	" -	281	5	0
					£937	10	0

Say, in all, nine hundred and thirty-seven pounds ten shillings sterling, being one fifth of the whole sum of £4,687 10s. that he had actually received on account of the whole of the Panton share. But whereas the complainants have confessed in their bill that they actually did receive the said three sums of three hundred and seventy-five pounds sterling each, making, in all, eleven hundred and twenty-five pounds, it is perfectly evident that they have received three-fourths of the whole sum that they had a right to claim, and that only one-fourth part more, or £375, remains to be deducted to make up the whole amount, exclusive of interest, of £1,500, fifteen hundred pounds, for which the said John Forbes had bargained the shares of the said Innerarity's; for it cannot, and this respondent thinks it will not, be contended, that a sale, even under warrantee, (and in this instance there was none,) by a party whose title fails, renders the party liable to the purchaser for any further sum than the amount paid, with interest.

This deponent further answering saith, that the mortgage granted by Octavius Mitchell, and mentioned in the complainant's bill, in the month of September, 1820, is intended to secure the two last payments then running to maturity, (viz: the instalments falling due on the 8 December, 1820, and 8 December, 1821,) and belonging to the heirs of the estates of William Panton and Thomas Forbes, and to none others, a fact admitted by the said Colin Mitchell; who, in conformity, paid to James Innerarity the sum of money that will be hereinafter also referred to.

This respondent further saith, that the whole of that sum ($25,000, or five thousand six hundred twenty-five pounds sterling) was then, viz: at the date of the mortgage, properly running to maturity, according to the shewing of the complainants in the bill; because in the year previous the said John Forbes, in his letter to his agent in London, Potts, as stated by them, the co'plainants, had already ordered him, the said Potts, to repay to them three several sums of five hundred and seventy-five pounds sterling each, out of the three first payments by them made; which three sums, amounting to £1,125 sterling, they admit that they had received; and because, as they also state, the said Forbes in his said letter had also ordered Potts to repay out of the ulterior instalments, (expected to be paid,) two further sums of three hundred and seventy-five pounds sterling each on the same account, viz: on account of the failure of his bargain for the Innerarity shares, which, as this respondent has already shewn, was three hundred and seventy-five pounds sterling too much; inasmuch as only one repayment, viz: that on the first instalment of £375 sterling ought to have been ordered or made, and four others of £281 5s. sterling each out of the amount of the four subsequent instalments when the same should be paid in full; these five sums making up that of fifteen hundred pounds sterling, the amount of the Innerarity shares, according to the bargain for the same which failed.

This respondent further saith, that not through any mistake or neglect, as the complainants allege, but in fulfilment of the original agreement, a bill of exchange for one-half of twenty-five thousand dollars, viz: for

two thousand eight hundred and twelve pounds and ten shillings sterling, being the amount of the fourth instalment, was given by the said Colin Mitchel to the said John Forbes, drawn on William Mitchel of London, payable in December, 1820; which bill was not paid by the said William Mitchel, but was returned under protest, as the complainants have stated in their bill.

This respondent further saith, that the said bill for the said fourth instalment, for the security of which, and the subsequent fifth and ultimate instalment the aforementioned mortgage was given, has not been paid, but still remains due and owing, with the damages and interest thereon, and also the said fifth and ultimate instalment of £2,812 10s., two thousand eight hundred and twelve pounds ten shillings sterling, which was due and payable in London on the 8 December, eighteen hundred and twenty-one, but which has not been paid, and therefore remains still owing, together with the interest thereon and premium of exchange to place the same in London; saving and reserving, however, from these two sums, making together the sum of £5,625, five thousand six hundred and twenty-five pounds sterling, or, at the rate of four shillings and sixpence per dollar, twenty-five thousand dollars, with interest and damages and exchange aforesaid, the following moneys which have been received on account and in part thereof, viz: by James Innerarity, from Colin Mitchel, on the 31 May, 1823, the sum of two thousand six hundred and eighty dollars 81 cents, and on the 15 February, 1825, the further sum of two thousand and eighty dollars 87½ cents, making together the sum of four thousand seven hundred and sixty-eight dollars 68¾ cents; which sums were paid to him as the executor of William Panton, and, with the interest thereon, are to be deducted from the half share of the heirs of the said William Panton in the two aforementioned unsatisfied instalments, as likewise is to be deducted from the sum of three hundred and seventy-five pounds sterling that will be still remaining owing to the complainants on account of the overcharge arising from the failure of the bargain for the Innerarity share, as herein before shewn.

This respondent leaves it to the court to decide according to law, to equity, and commercial usage and custom, on the damages on the protested bill, the exchanges, the rate of interest, and other charges to be borne and paid by the complainants, in view of the long period that they have enjoyed the money in this country which ought to have been paid in London.

This respondent further answering saith, that he has understood William H. Forbes that he had, some time in the year 1823, received from the aforementioned Colin Mitchel the amount that he claimed on account of the interest or share belonging to himself, his brother, and sister, in the said protested bill; but as to the particular time when, or amount so received, this respondent cannot speak.

This respondent further answering saith, that the complainants are in error in stating that Edmund Depestre is an executor of John Forbes; that the executors of the said John were his natural daughter Sophia and her husband Francis Dalcoud, the said Depestre having an interest in

the estate of the said Forbes only in right of his wife Juana, another natural daughter of the said Forbes. This respondent admits that he has [been] appointed administrator of the estate of John Forbes, who has departed this life as stated in complainant's bill.

This respondent having fully answered, traversed, or denied every thing material for him to answer, prays that this honorable court will make such decree in the premises as may be according to equity, and that whatever amount may be due to this respondent as administrator may be decreed to be paid at an early day; and in case of failure that the mortgage[d] premises may be decreed to be sold, and the complainants, and all persons claiming under them, be forever barred of, and from, all equity of redemption. And this respondent prays that he may have his reasonable costs, &c.

BLOUNT,
Solicitor for respondent.

John Innerarity maketh oath, that the several matters and things contained in the foregoing answer, of his own knowledge, are true, and those not of his own knowledge he believes to be true.

JOHN INNERARITY.

Sworn to before me, the 13 day of December, 1838.

WM. WASHINGTON J. KELLY, *Clerk.*

Pleas before the honorable the judge of our superior court of law for West Florida, at a regular term of said court begun and held at the court house in the city of Pensacola, on the first Monday in November, A. D. 1841, and of the independence of the United States the 66th year.

Be it remembered that heretofore, to wit, on the 19[th] day of August, 1839, came John Innerarity, administrator of John Forbes, deceased, and James Innerarity, and filed their original bill for foreclosure, which bill is as follows:

JOHN INNERARITY, adm'r of John Forbes, dec'd, and James Innerarity,
vs.
JOHN CARNOCHAN, Peter Mitchell, et al.
} In chancery.

To the honorable the judge of the superior court of the western district of Florida, sitting at Pensacola, exercising chancery jurisdiction.

Humbly complaining, shew unto your honor, your orators John Innerarity, of Pensacola, administrator of all and singular the goods and chattels, rights and credits, of John Forbes, deceased, and James Innerarity, of the city of Mobile; that in the year 1819, or thereabouts, John Forbes sold to Colin Mitchell, late of the island of Cuba, all that tract of country between the Apalachicola and Saint Mark's rivers, known by the name of "Forbes' purchase," and containing by estimation one million two hundred thousand acres more or less, for the sum of one hundred and eleven thousand six hundred and seventy-six dollars, or thereabouts; that the said Colin Mitchell paid at different times all the

consideration money except the sum of twenty-five thousand dollars, which was due to John Forbes in the capacity of trustee, for the benefit of the estate of William Panton, deceased, and the estate of Thomas Forbes, deceased, the said Panton and Forbes being entitled to a beneficial interest in the aforesaid tract of land. Your orators further show, that the said Colin Mitchel, on or about the 29th May, eighteen hundred and nineteen, received in due form of law a conveyance from the said John Forbes for the said tract of land, making certain reservations thereon, as will appear by the said deed, a copy of which is annexed hereto, and which your orators pray may be taken and received as a part of this their bill. Your orators further show, that the said Colin Mitchel being a Spanish subject, was not the sole owner of the said tract of land, but that he held as well for himself as John Carnochan and Peter Mitchel, at that time merchants, trading under the firm of Carnochan & Mitchel, at Savannah, Georgia, and other cestui que trusts, whose names are unknown to your orators. Your orators further show, that for some object best known to the owners of said tract of land and of which he is ignorant, the said Colin Mitchel transferred all his legal estate therein to one Octavius Mitchel, by the proper forms of conveyance, and the said Octavius became thereby substituted in the place and stead of the said Colin Mitchel; that at the time of the substitution aforesaid, there was due and owing on account [of] the said purchase money the sum of twenty-five thousand dollars as aforesaid, which was due as before mentioned to the estates of William Panton and Thomas Forbes, the said Panton and Forbes being beneficially interested in the said tract of land so sold by the said John Forbes. Your orators further shew, that to secure the payment of the said sum of twenty-five thousand dollars, the said Octavius Mitchel executed in due form of law, on or about the 30 day of September, 1820, a mortgage upon the said tract of land, a certified copy of the said mortgage is hereto annexed, and which your orators pray may be taken and received as a part of this bill, (the original being on file in the office of the keeper of the public archives of West Florida, at Pensacola.)

Your orators further shew, that the said sum of twenty-five thousand dollars was to be paid in manner following, to wit: twelve thousand five hundred dollars in London, on the 8 December, 1820, and twelve thousand five hundred dollars at the same place, on the 8 December, 1821; that Colin Mitchel gave a bill on London payable on the 8 December, 1820, for two thousand eight hundred and twelve [pounds] ten shillings sterling, equal to twelve thousand five hundred dollars, which bill was returned under protest with fifteen per cent. damages.

Your orators further show, that John Forbes departed this life at Matanzas, in the island of Cuba, in the year 1822, or thereabouts, leaving a last will and testament, wherein he appointed Edmund Depestre and Francis Dalcour, executors; that the said last will and testament has never been offered for probate within the territory, and the letters of administration on the estate of John Forbes have been duly granted to your orator John Innerarity, by the county court of Escambia, which

letters of administration your orators *have* ready to produce, when and where this honorable court may direct.

Your orators further represent, that they have understood and believe that the executors of John Forbes, well knowing that the mortgage aforesaid was executed solely for the benefit of the estate of William Panton and Thomas Forbes to secure the payment for their proportions in the aforesaid tract of land known as Forbes' purchase, refused to take upon themselves the settlement of the said mortgage.

Your orators further represent, that the said Colin Mitchel paid on account of the protested bill aforesaid to James Innerarity, *surving* executor of William Panton, the sum of four thousand seven hundred and sixty-eight dollars, five and half reals, in two payments, to wit: on the 11 May, 1823, the sum of two thousand six hundred and eighty dollars six and a half reals, and on the 15th February, 1825, the sum of two thousand and eighty-seven dollars and seven reals; which sum was in part payment of the interest of William Panton in the said Forbes' purchase.

Your orators further show, that they have understood *the* Colin Mitchel made a similar payment to William H. Forbes, executor of Thomas Forbes, deceased; of this, however, your orators have no evidence, as the receipts of the said William H. Forbes have never been exhibited to them.

Your orators further shew, that they have been earnestly endeavoring to effect a settlement of the said mortgage ever since your orator John Innerarity became the administrator of the said John Forbes, but the same has been evaded by the parties claiming interest in the said mortgaged premises upon pretexts altogether frivolous and irrelevant to the subject matter of said mortgage.

Your orators further represent, that they have understood and believe that the title to the estate known as Forbes' purchase, has been vested in Louis McLane, of Baltimore, Charles Augustus Davis, of New York, and Joseph M. White as trustees, in order that the settlement of the same among the different owners, who have become clamorous, may be facilitated; that on submitting the matter to the said trustees, and a calculation of the amount due on said mortgage, on the 30 September, 1836, it was fifty-seven thousand seven hundred and ninety dollars and eighteen cents, subject to a deduction for the payment acknowledged to have been received by James Innerarity, executor of William Panton, deceased, on account of the said protested bill of exchange, and also for the payment that may have been made on same account to William H. Forbes, as the executor of Thomas Forbes; of which payment, or its amount, your orator, however, has no evidence, except the verbal declarations of persons who are interested therein.

Your orators further represent, that they have earnestly endeavored to make a settlement with the said trustees of the said mortgage, but they have not been able to succeed, and cannot complete it without a resort to this honorable court.

Your orators further show, that they have understood that Lewis Cur-

tis and George Griswold have also been created trustees of the Apalachicola Land Company, and that the said Lewis Curtis and George Griswold reside in the city of New York.

But now so it is, &c. In tender consideration whereof, and for as much as your orators are remediless in the premises, &c. To the end, therefore, that the said John Carnochan, Peter Mitchel, Octavius Mitchel, Joseph M. White, Louis McLane, and Charles Augustus Davis, Lewis Curtis, and George Griswold may, upon their several and respective corporal oaths, full, true, and perfect answer make to the several matters and things herein set forth, in as full and ample a manner as if the same were herein repeated, and they thereto specially interrogated.

And your orators pray, that the said parties may be decreed to pay the amount that may be due in the said mortgage at an early day, and in case of failure to pay the said amount, that the said parties and all persons claiming under them may be forever barred of all equity of redemption of, in, and to the mortgaged premises, and William H. Forbes may be made a party to this bill, and that your orator may have such other and further relief as to your honor shall seem meet. And your orators, as in duty bound, will ever pray, &c.

BLOUNT, *pro complt.*

A.—*Conveyance.*

ISLAND OF CUBA:

Be it known by this memorandum, made duplicate, betwixt Mr. John Forbes, executor of the late William Panton and Thomas Forbes, on the one part, acting in behalf of the heirs of said deceased, and Colin Mitchel, agent for and acting in behalf of Messrs. Carnochan and Mitchel, merchants, Savannah, on the other part, that the said John Forbes hereby agrees and bargains to sell unto the said Colin Mitchel, two undivided thirds of a certain tract of land ceded by the Creek Indians unto the house of trade, of which said Forbes was a principal partner, lying and situated upon and betwixt the rivers Apalachicola and Apalachy or Wackhulla, as more plainly appears by the map or plan thereof now in the possession of said Colin Mitchel, saving and excepting always the following reserves, which are not included in the sale, viz:

1. Fifteen thousand acres laid *of* and surveyed in four tracts in the names of P. L. Trouillet, Marcus De Villiers, A. Guilmiand, and Chev'r de Villiers.

2. An island named Forbes' island, situated on the Apalachicola river, about thirty-five [miles] from its mouth, following the circuities of the river.

3. Six hundred and forty acres given to the interpreter, William Hambly, for services.

4. Six hundred and forty acres made over to Edmund Doyle, secretary, at the time of cession.

And 5. About four hundred acres made over to George McPherson, one of the chain carriers.

Saving and excepting the above sixteen thousand six hundred and eighty acres, and the said island called Forbes', the said John Forbes will make over to the said Colin Mitchel the aforesaid two undivided thirds of said land for and in consideration of the sum of sixty-six thousand six hundred and sixty-six dollars and two-thirds of a dollar, to be paid for in the manner following, namely: one quarter, or sixteen thousand six hundred and sixty-six dollars, on the first May next in the city of London, valuing the same at four shillings and six pence sterling each dollar. The remainder, or fifty thousand dollars, in four equal yearly instalments, reckoning from this date.

And whereas it is not possible to make out proper titles until the plans and original surveys shall come to hand from West Florida, the present minute is made for the purpose of ratifying the bargain; for the sure fulfilment whereof the above parties have hereunto interchangeably set their hands and seals, viz: John Forbes, in the city of Matanzas, on the fourth day of December, one thousand eight hundred and seventeen, and Colin Mitchell, in the city of Havanna, on the eighth day of same month and year.

Signed, COLIN MITCHEL, [L. S.]
Signed, JOHN FORBES. [L. S.]

CONSULATE OF THE UNITED STATES OF AMERICA,
Matanzas.

I, Lewis Shoemaker, consul of the United States at this port, and residing within the same, do certify, that I have carefully collated and compared the annexed copy with the original agreement, and do find the same to be a true and faithful copy thereof.

[L. S.] Witness my hand and seal of office, this 3d day of July, 1835.
Signed, LEWIS SHOEMAKER, *Consul.*

Mortgage.

The following is a true translation of the mortgage from Octavio Mitchel to John Forbes, to wit:

"In the city of Pensacola, on the ninth day of the month of September, one thousand eight hundred and twenty. Before me, Joseph Noriega, constitutional alcade of this province, and of the competent number of witnesses, personally appeared Octavio Mitchel, of the city of Pensacola, and declared that he is justly indebted unto John Forbes, of the city of Matanzas, in the island of Cuba, in the sum of twenty-five thousand dollars; which aforesaid sum the said Octavio Mitchel hereby binds himself well and truly to pay unto the said John Forbes, under the following terms, that is to say: twelve thousand and five hundred in eight months from the day of the date of this deed, and the remaining twelve thousand five hundred in eighteen months from the day and date hereof, without law suit nor judicial contest, being at the expense of the said Octavio Mitchel, the costs and charges, which, in a necessary case, upon an unexpected event, he should fail to comply with the payment of the sum aforesaid, and required to be prosecuted by

law with so much of this deed, and the simple oath of the lawful party; and to secure the payment of the said twenty-five thousand dollars, the said Octavio Mitchel does mortgage, expressly and especially, the undivided half of the tract of land which he, the said Octavio Mitchel, just purchased of John Innerarity, as appears by deed of conveyance executed in this office, bearing date ninth of the present month and year, which tract of land is situated on the eastern side of the river Apalachicola, and river Saint Marks, of Apalache, being the two cessions of land originally granted by the Seminoly Indians to the houses of Messrs. Panton, Leslie and company, and to John Forbes and company, under the limits and boundaries described in the said deed of conveyance made by John Innerarity, as is already stated; and in compliance thereof the said Octavio Michel hereby promises not to alienate, exchange, or transfer the premises hereby pledged to any other person to the prejudice of the lawful *partie*, and requested that this deed should be noted in the book "Capi" for that purpose; in proof thereof, renouncing, he, the said Octavio Mitchel, the laws, rights, and privileges in his favor, with the general in form, prohibiting the same. In testimony whereof, the said Octavio Mitchel acknowledged and signed the above; as also being present the lieutenant of the Louisiana regiment and Charles Reggio, as the attorney in fact of the said John Forbes, accepts of the present mortgage in favor of the said John Forbes, of which I, the said constitutional alcade, do hereby certify in the same manner, that the aforesaid tract of land is not mortgage or encumber to any other person, except in the execution of this present mortgage: signed by the grantor and acceptor with me and the assistant witnesses, being instrumental witnesses, John De La Rua, Henry Michelet, and Domingo Sansa.

Signed, OCTAVIO MITCHEL.

Accepted in favor of my attorney.

CHARLES REGGIO.

Before me,
JOSE NORIEGA,
SEBASTIAN CARO,
LEWIS DANNOY.

I, Joseph E. Caro, keeper of the public archives of West Florida, duly qualified and commissioned by the Government of the United States of America, do hereby certify the foregoing to contain a true and correct copy from the original on file in my office, in the third protocol of the year 1820, at pages 14 and 15; and also a true and careful translation of the above copy made by me to the best of my knowledge and understanding from the Spanish document.

In testimony whereof, I have hereunto set my hand, and affixed my [L. S.] seal of office at Pensacola, this 4th day of December, A. D. 1835.

Signed, JOS. E. CARO,
Keeper of the Public Archives, W. Florida.

JOHN INNERARITY, adm'r of John Forbes, deceased, and James Innerarity, compl'ts,
vs.
JOHN CARNOCHAN, PETER MITCHEL et alii, defendants.
} In chancery.

This day came the complainants by their counsel, and it appearing to the satisfaction of the court, upon affidavit filed, that William H. Forbes does not reside in the Territory of Florida, it is therefore ordered, that unless he appear here on or before the first Monday of May next, and answer the complainant's bill of complaint, filed herein, the same will be taken for confessed as to the said William H. Forbes, and the matters and things therein contained decreed accordingly; and it is further ordered, that a copy of this order be published in the Pensacola Gazette once a week for four weeks successively.

Answer of ex'or of Wm. H. Forbes, and ex'or of Thomas Forbes, to bill of complaint, John Carnochan, Peter Mitchel, et al. Filed 4 May, 1840, and withdrawn upon affidavit on 22 June, 1840.

Affidavit.

JOHN CARNOCHAN, PETER MITCHEL, et al.,
vs.
JOHN and JAMES INNERARITY, and WM. H. FORBES, &c., in chancery.

In chancery, western district of Florida.

This day personally appeared Wm. H. Brockenbrough, solicitor of Wm. H Forbes and John Gordon Forbes, before the honorable Dillon Jordan, of said district, at Chambers, and prayed the court that the motion heretofore filed in this court on the 4th day of May, 1840, by him in behalf of John Gordon Forbes, ex'or of John Forbes, deceased, praying to be made parties in this case, and their answer filed therewith, in anticipation of the motion then made to be made parties, be withdrawn, as the said motion was made by him as solicitor of said John Gordon Forbes, without consultation with his client, and in ignorance of his rights; and that he, the said John Gordon, believes that his rights and interests are not properly set forth in said answer, but wholly mistaken, and his solicitor concurs with him in this opinion, and therefore prays the court that said John Gordon Forbes be allowed to withdraw his motion, and answer filed with the same, and to be hence dismissed upon payment of costs, and that said Walworth have permission to file his separate and amended answer, of the same tenor and purport of the answer now to be withdrawn.

The facts set forth in this motion verified by affidavit by William H. Brockenbrough, solicitor.

(Signed,) WM. H. BROCKENBROUGH.

Sworn to and subscribed at Chambers, this 22d day of June, A. D. 1840. WM. W. J. KELLY, *Clerk.*

JOHN CARNOCHAN, PETER MITCHEL, et al.,
vs.
JOHN & JAMES INNERARITY and WM. H. FORBES,
} In chancery.

Western district of Florida.

John Joseph Walworth, executor of William H. Forbes, comes into court by James T. Archer, his solicitor, and withdraws his motion to be made a party defendant in this cause, and his answer filed therewith in anticipation of being made a party defendant in said cause, and is ready and willing to pay the costs.

JAMES T. ARCHER, *Sol'r of*
JOHN JOSEPH WALWORTH.

Notice accepted, W. ANDERSON,
Special att'y for J. C.

JOHN INNERARITY, administrator of JOHN FORBES, dec'd,
vs.
JOHN CARNOCHAN, and others.
} 21 November, 1840.

In this cause leave is granted to William H. Brockenbrough, as solicitor, upon motion and affidavit, to withdraw his motion, together with accompanying answer, to make John Gordon Forbes as executor of Thomas Forbes, deceased, and John Joseph Walworth executor of William H. Forbes, deceased, parties defendant to this cause.

CURTIS & GRISWOLD, trustees of Apalachicola Land Company,
ads.
JOHN INNERARITY.
} Answer in chancery.

To the honorable Dillon Jordan, judge of the superior court for Escambia county, sitting in chancery:

The answer of Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company, to a bill of complaint filed against them and others in this honorable court by John Innerarity.

These respondents, saving and reserving to themselves all benefit of exception to the many errors, mis-statements, deficiencies, &c., in said bill contained, for answer thereto, or as much thereof as they are advised is material for them to answer unto, they answer and say:

They admit the execution by Octavius Mitchel to John Forbes, on the 9 September, 1820, at Pensacola, of a mortgage on the one-half of a tract of land lying between the *the* Apalachicola and St. Mark's rivers, and known as Forbes' purchase, to secure the payment of twenty-five thousand dollars, payable in two instalments, in eight months and eighteen months from the day of the date, which mortgage is on file in the office of the keeper of archives of West Florida, and a copy thereof is amongst the papers; that said tract was obtained by John Forbes & Co., and Panton Leslie and company, by purchase from the Indians, about the years 1810 and 1811, with the assent of the Spanish government, and became vested by various conveyances in Colin Mitchel, Ben-

jamin W. Rogers, William Christie, ——— McNish, ——— Calden, Robert Mitchel, in his own right, and as trustee of Carnochan and Mitchel, Benjamin Marshal, John P. Williamson, and Richard Carnochan; that on the transfer of Florida to the Government of the United States, it became necessary by law to present said claim, or the title to said tract, for confirmation to the board of commissioners for the adjudication of claims to land in West Florida, which was done on the day of the same was rejected as not being in the opinion of said board legal or valid.

That afterwards an act of Congress having been passed for that purpose, a suit was instituted by said parties against the United States in the superior court for Middle Florida, for confirmation of the title, but said court, on the day of rejected said claim, and declared the same to be fraudulent and void; but that on appeal to the Supreme Court of the United States, the said decision was reversed, and said claim and title to said tract was, at the term of 1835, confirmed to said parties, as by reference to the record and proceedings of said courts, prayed to be taken as part of this answer, will appear.

That said parties, directly after said decision, sold out and transferred large portions of their interests in said tract, to others in New York and elsewhere, having divided the same into shares for that purpose; and subsequently in 1836, for the more convenient transaction of business, it was agreed by the parties interested to form a company, to be called the Apalachicola Land Company, the title to be vested as was done in three trustees, to hold their officers for a specified time, when others were to be elected to supply their places; that Louis McLane, Charles A. Davis, and Joseph M. White, were the first trustees, and discharged their duties as such until the day of when these respondents were appointed in their stead, and received from them an assignment and transfer of said tract, and of all their interest therein, as by the deeds, copies whereof will in due time be filed, if necessary, as part of this answer, will fully appear.

These respondents are strangers to the facts and circumstances connected with said purchase, farther than is hereinbefore and will be hereinafter stated, except from hearsay, and they by no means admit the same as set forth in complainants' bill. They do not admit the bill of exchange charged to have been given by Colin Mitchel, or his brother in London, which is alleged to have been returned protested, nor their liability thereon, insisting that the terms of the mortgage, and not any private arrangement between a portion of the parties ascertained, their liability, if liable, on the bill. They insist on its production and proof of protest, if lost upon proof thereof, &c., and an indemnity, and to be relieved of interest, &c., for want thereof. They would state to your honor that they are entitled to credit on said mortgage of three hundred and seventy-five pounds, money overpaid in London in 1818, and which was directed to be repaid by John Forbes, by his letter, addressed to James S. Pott, his agent in London, dated 8th December, 1819, as admitted by his executor, Edmund DePestre, and also by the letter of complainant,

8144.

of the date which will be in due time filed, and prayed to be taken as part of this answer.

Your respondents would state that it is true, as charged in complainants' bill, that they are entitled to a further credit of two thousand six hundred and eighty dollars eighty-one cents, paid to James Innerarity as executor of William Panton, to whom the same was due on the 31 May, 1823, and of another sum of two thousand and eighty-seven dollars paid to said Innerarity on the 15 day of February, 1825; that a further payment was made on the 11 October, 1823, to William H. Forbes, as executor of Thomas Forbes, also entitled to an interest in said mortgage. That a further payment was made by these respondents at New York, on the 19th September, 1839, to Thomas M. Blount, the solicitor and attorney of complainant, who was also his agent, by special power of attorney, of the sum of thirteen thousand three hundred and fifty-seven dollars seventy-three cents, as by his receipt, filed herewith, will fully appear.

These respondents admit the death of John Forbes, as alleged in the bill, and that Edmund De Pestre and Francis Dalcour are the executors of his last will and testament; that the same was never presented for probate in this territory; that said complainant, in consequence thereof, on the day of took out letters of administration upon his estate in Florida; they also admit that said executors of John Forbes refused to take upon themselves the settlement of said mortgage as charged in said bill.

These respondents deny that the amount due on said mortgage is as stated in said bill, or that a settlement has been evaded by the parties claiming an interest in the said premises upon pretexts altogether frivolous and irrelevant—so far from this, respondents expressly allege that provision was made early in 1836 for the payment of the sum due on said mortgage, and the money for that purpose has remained unused in New York ever since; that applications have been made again and again to said complainant to receive it, but that he has interposed obstacles and objections, evidently more solicitous to find an excuse for writing a plausible letter in objection to a settlement, than to remove obstacles in the way; that the late trustees solicited him in vain, and fifteen thousand dollars in 1838 were placed in the Bank of Pensacola by C. A. Davis with this view; but the officers of the bank finding him indisposed to every practicable arrangement declined the agency, and returned the money; two letters, one from said Davis to the bank, and a letter from said Innerarity, are filed herewith, and prayed to be taken as parts hereof. The late Col. White, another trustee, in a letter addressed to complainant, dated New York, October 3, 1838, uses this language: "There was a meeting of the Apa. Co. last night, and they have decided upon a reorganization. Our trust expires next month, and we decline further action. This will place you in an embarrassing situation. The affairs of Carnochan and Mitchel will probably go into chancery, and there remain for years. There was great dissatisfaction felt that your mortgage had not been extinguished. We replied that

every effort had been made. I would advise you, as an old friend, immediately to write to C. A. Davis to forward you the money we have of C. & M's, through the Bank of Pensacola, be delivered when you credit the same upon the mortgage, or to deposit it in the United States, subject to your checks when you forward the bank a receipt as administrator for the same; we can pay you 15 or 20,000 on account, leaving balance, if any, adjusted between and C. & M." That as further evidence of this disposition of said complainant to raise objections, and to prevent an adjustment of this matter, your respondents are informed that he has disavowed the payment made to his agent and attorney of $13,500, alleging the shallow and flimsy pretext that he had exceeded his authority; when your respondents are informed the true cause is to be found in a general or private misunderstanding between the principal and his agent as to the amount the agent should receive for his trouble in the negotiation, and an amount for professional services, &c., which said complainant refused to admit, hoping thereby to avoid a contest with his agent by throwing the loss upon your respondents.

These respondents insist that they are not justly chargeable with interest on the said mortgage for the whole length of time, because they say that, until the time when said Innerarity took out his letters, there was no person to receive said payment, the said Forbes being out of the country, and his executors also; and these respondents and their predecessors in interest were not bound to seek them out to make payments; and because the executors of said Forbes, as stated in said bill, refused to take upon themselves the settlement of said mortgage; because, by the terms of the mortgage, no interest was payable; because, by the unfortunate decisions made by the board of commissioners above stated, and the superior court of Florida deciding said claim to be fraudulent, the assignors in interest of these respondents were prevented from turning said land to account, or deriving a revenue from it, or even paying the principal; as by such decision, if sustained, they would have been justified in resisting every payment whatever on said mortgage; that owing to the necessity of procuring a confirmation of the title which was represented to be free from doubt, but which it afterwards required the greatest exertions of the parties to maintain, they were compelled to expend, and did lay out, in maintaining said title an amount greater than the original purchase-money, to wit, the sum of $120,000, which was necessary in not only saving the title, but also in defending the parties from imputation of the grossest fraud and corruption; these respondents insist that the complainant as administrator aforesaid, and the parties interested, should bear a portion of these expenses; or, at all events, they insist that the labour, time, and expense of the parties in the protection of their interests should, in equity, entitle them to an abatement of the interest, if not to the payment of their share of the expense.

These respondents are hopeless of ever settling the amount of the mortgage with said complainant, if any be due, as they insist there is not, and pray the court to pass an order for its receipt by the clerk, who shall be authorized to give receipt and acquittances therefor.

845.

These respondents having fully answered, denying all fraud with which they are charged, pray to be hence dismissed with their costs, &c.

THOMAS BALTZELL.
Sol'r for def'ts.
LEWIS CURTIS, and
GEORGE GRISWOLD,
Trustees of the Apa. Land Co.

"Filed 21 May, 1841.

WM. W. J. KELLY, *Clk.*"

And at another day, to wit, on the 12th day of June, 1840, came John Innerarity, by Walker Anderson, his solicitor, and filed his cross bill, which is in the words and figures following, to wit:

To the honorable Dillon Jordan, judge of the district of West Florida, for the county of Escambia, in chancery sitting:

Humbly complaining, sheweth unto your honor, your orator John Innerarity, of the county aforesaid, and one of the respondents to a bill of complaint now on the files of this honorable court, in which John Carnochan, Peter Mitchel, Louis McLane, Charles A. Davis, and Joseph M. White, are complainants, and your orator and James Innerarity, and William H. Forbes, are defendants; that in December, 1817, John Forbes, acting as the executor of William Panton and Thomas Forbes, by articles of agreement with Colin Mitchel, covenanted to sell to the said Colin Mitchel a certain tract of land lying between the Apalachicola and Saint Mark's rivers, in Florida, known by the name of Forbes' Purchase, with certain reservations as specified in said articles of agreement, a copy of which is on file in the suit aforesaid, and which your orator prays may be made a part of this cross bill; that the price agreed upon and expressed in said articles of agreement was sixty-six thousand six hundred and sixty-six and two-third dollars; that of the land which John Forbes thus agreed to sell to the said Mitchel, one-tenth part belonged to your orator and James Innerarity, which was afterwards admitted by both John Forbes and Colin Mitchel; and on the 29th May, 1819, when John Forbes, in pursuance of the terms of his agreement, conveyed, by his agent Don Carlos Reggio, to the said Colin Mitchel, the aforesaid land, he made in his deed of conveyance an express reservation of the undivided share which belonged to your orator, and to James Innerarity; and on the same day, to wit, on the 29th May, 1819, Colin Mitchel purchased of John Innerarity his interest in the same, and on the 4th Aug., 1819, of James Innerarity his interest.

Your orator would further show unto your honor that, on the 13 September, 1820, there remained, as the complainants in their bill aforesaid admit, due of the aforesaid purchase-money, and unpaid, the sum of twenty-five thousand dollars; to secure which Octavius Mitchel, to whom Colin Mitchel had transferred the property aforesaid, gave to John Forbes a mortgage on the whole property, covenanting to pay the aforesaid sum in two equal instalments of twelve thousand five

dollars each in London—one on the 8th December, 1820, and the other on the 8th December, 1821; that in payment of the first instalment Colin Mitchel gave to John Forbes a bill of exchange on London; which bill was soon afterwards returned protested, and yet remains unpaid; while the second instalment of the sum secured as aforesaid remains also unpaid, except certain payments alleged by complainants to have been made to James Innerarity, and to William H. Forbes, which your orator is willing to admit so far as said complainants can and will exhibit proper receipts and duly authenticated discharges for the same.

Your orator further shews unto your honor, that having taken letters of administration upon the estate of John Forbes, who deceased long since, to wit, in May, 1822, your orator found the debt due to John Forbes, and secured by the mortgage aforesaid, in the situation above recited; the bill of exchange which was returned protested being also subject to twenty per cent. damages, and the whole amount subject to exchange at a premium of ten per cent., and interest up to this date at the rate of eight per cent. per annum, the long established rate of interest in this territory; the whole amount being, as will appear particularly by a statement annexed to this cross bill, seventy-six thousand two hundred and sixty-six 92-100 dollars now due to your orator, as subject as aforesaid to the credits above mentioned.

Your orator further shews unto your honor, that during the last year the complainants aforesaid, having expressed to your orator a willingness to pay a portion of the money due on the mortgage aforesaid, and your orator being desirous and anxious to receive the same in order to bring the business of his administration to a close, he executed a certain paper writing bearing date the 1 Aug., 1839, now on file in this honorable court; and which being marked ( ), he prays may be taken a[s] part of his cross bill. Which paper writing was a *special* power of attorney to Thomas M. Blount, to receive for and in behalf of your orator, as administrator aforesaid, such sum of money as the complainants aforesaid might be willing and ready to pay, and to give a receipt in the name of your orator for the same. That the said Thomas M. Blount received from the complainants aforesaid the sum of thirteen thousand and three hundred and fifty-seven 73-100 dollars, and also an informal instrument by which the complainants aforesaid, by one Lewis Curtis and one George Griswold, who represent themselves to be the trustees of the Apalachicola Land Company, to whom the mortgaged property aforesaid now belongs, subject, nevertheless, to the sum aforesaid, covenant to pay to your orator, upon certain contingencies, a further sum of five thousand dollars, with the corresponding interest.

Your orator further shews, that the said Thomas M. Blount, in consideration of the money above mentioned, and the instrument of writing just described, instead of confining himself to the authority conferred upon him by the special power of attorney as aforesaid, to wit, to receive and give receipt for whatever money might be paid, altogether transcended that authority, and undertook to give to the aforesaid trustees of the Apalachicola Land Company a release of a part of the security held

by your orator, vastly out of proportion to the amount received; that this release assumes to be final and unconditional, as will appear by reference to the original, which is filed with the papers of this suit and marked ( ), while the said Blount represented to your orator that the money for which a receipt had been given by him was not in his possession, but would be paid over when the trustees aforesaid consented to some proposition made to them. Your orator prays that a letter marked (U), and herewith filed, may be taken as part of this cross bill.

Your orator further shews to your honor, that after the pretended release aforesaid had been given by the said Blount, but before it had been seen by your orator, or put on file by the complainants, your orator was informed by the said Blount that he had made an arrangement with the trustees aforesaid, subject to the decision of your orator; that your orator, without delay, gave notice to the trustees aforesaid, and to their agent in the territory, John Carnochan, of his decided and entire rejection and disapproval of what had been represented to him as a provisional arrangement, a copy of which notice is filed herewith, and marked (K); and that your orator was overwhelmed with surprise when the release aforesaid met his eye for the first time, when placed on file by the complainants aforesaid. That your orator, in the most solemn and decided manner, protested against the same being considered as his account, or the act of his legally constituted agent, and without delay notified the trustees aforesaid, and their agent aforesaid, of his dissent from, and disavowal of, the same; which notice being herewith filed and marked ( ), your orator prays may be taken as part of this cross bill.

And your orator did well hope that the trustees aforesaid, and their agent aforesaid, would have consented to deliver up the aforesaid paper writing purporting to be a release to be cancelled, as in justice and equity they ought to have done. But now so it is, may it please your honor, the said complainants, and the said trustees of the said Apalachicola Land Company, and the said Thomas M. Blount, colluding and confederating with each other, refuse to comply with such reasonable requests, and pretend that said Thomas M. Blount was duly authorized and empowered by your orator to give the release aforesaid, and that the complainants aforesaid, and trustees aforesaid, are fully and forever discharged thereby according to its terms and tenor; whereas, so may it please your honor, your orator expressly charges that the paper writing assuming to be a release aforesaid, having been given by the said Thomas M. Blount without authority from your orator, is not binding upon your orator, and does not release the mortgage aforesaid, or any part thereof, and that all the acts in the premises of his aforesaid attorney having been beyond the authority conferred upon him, are, and of right ought to be, declared null and void; and your orator ought to be placed in the same situation in which he was prior to the aforesaid unauthorized release given by the said Thomas M. Blount.

And your orator further charges that the trustees aforesaid, and the complainants aforesaid, and the said Thomas M. Blount, well knew the amount that was justly due to your orator, and which was secured by

the mortgage aforesaid; that your orator, in his answer to the original bill in this suit, stated his claims at large, and insisted strenuously upon his equitable and just rights thereto, the said Blount acting as his solicitor in the said suit, and that in frequent and long protracted correspondencies between your orator and the complainants aforesaid, that your orator never ceased to assert, or faltered in demanding his just and rightful claims, as set forth in his answer aforesaid.

Your orator further charges, that the claim set up by the complainants to a deduction from the sum secured by the mortgage aforesaid to John Forbes, by Colin Mitchel, in consequence of an alleged mistake in contracting to sell the interest of your orator and James Innerarity, has been always resisted by your orator, as was well known to the complainants aforesaid and to the said Thomas M. Blount, on the ground chiefly that any deduction of that sort, which, as complainants allege, was agreed to be made by John Forbes, in a letter bearing date 8th December, 1819, would have been made at the time when the contracting parties on the 13 September, 1820, ascertained the balance then remaining unpaid, and secured the same by a mortgage on the whole property aforesaid.

Your orator charges, that the settlement made on that day is to be regarded as the adjustment of all prior conflicting claims, credits, deductions, and charges made in the original contract, and that the parties concerned cannot look beyond that well considered and solemn act; and even if such admissions, alleged to be made by John Forbes, who was acting in the character of executor, could be established, your orator contends they could not affect the right of your orator, as administrator, whose trust is based wholly upon the liquidated settlement made as aforesaid, on the 13 September, 1820; and any pretended claims, founded upon the admissions of John Forbes, must be urged against his private estate, and not against the trust which your orator holds. Of all these rights of your orator, he charges, that the complainants aforesaid, and the said Thomas M. Blount, were well aware, as well as of his long resistance to the unfounded claims of the complainants, and his resolute determination to demand and enforce his equitable and just rights; and that they were also well aware that your orator, as administrator of John Forbes, had neither the right nor the power, even in his own proper person, to change the security upon which his trust was founded, or to relinquish, without consideration or matter of inducement, any part of the estate of which he was in charge, or to change or alter the character of the mortgage aforesaid; and that having no such power himself, he could not confer it upon another.

Your orator further charges, that the said Thomas M. Blount, besides assuming to exercise a power *a power* which could not be conferred by your orator, assumed also to exercise others which were not conferred, as agreeing upon the rate of interest upon the suspended payments, much less than the long established rate of interest in this Territory, and such as your orator had long and resolutely refused to agree to, and taking in part payment of the debt, so amply secured by the mortgage aforesaid, a paper instrument of a vague and undefined character, unsecured

in any way, and the payment of which even was, on the face of it, declared to be a matter of contingency, and which is not even referred to in the pretended release. Wherefore your orator expressly charges, that the said Thomas M. Blount, in all the actings and doings aforesaid, grossly and flagrantly transcended, not only the spirit, but the letter of the special power of attorney, under color of which he has assumed to do such unauthorized and illegal acts. He charges that such unauthorized and illegal acts are of no binding obligation, either in law or equity, on your orator. He charges, that the said Thomas M. Blount, in the actings and doings aforesaid, represented the interests of the party, who, in this controversy, are adverse to your orator, as he himself expressly admitted, and which your orator is ready to prove. He charges the trustees aforesaid are colluding and fraudulently combining with the said Thomas M. Blount, inasmuch as they were well informed of the conditions and restricted terms of the special power of attorney, given by your orator to the said Blount, and that in giving the deed of release aforesaid, he was transcending his authority and violating the confidence reposed in him; and they also knew that your orator, as administrator, had no power to confer such authority, even had he attempted to do so, which they well knew he never did; and they also knew that your orator had long and earnestly opposed the claims and assumptions which the said Blount, without authority, readily yielded to said trustees.

Your orator therefore charges, that the trustees aforesaid, and the complainants aforesaid, and the said Thomas M. Blount combining and confederating with each other, and with divers other persons, at present unknown to your orator in the premises, refuse to deliver up or cancel the aforesaid fraudulent and invalid deed of release, though requested so to do, to the great loss and detriment of your orator, and of the interest which he represents. All of which actings and doings, pretences and refusals, are contrary to the rules of equity and good conscience, and tend to the manifest wrong and injury of your orator in the premises.

In tender consideration whereof, and for as much as your orator is without relief, according to the strict rules of law, he prays your honor to grant unto him the Territory's most gracious writ of subpœna, requiring the complainants aforesaid, and the trustees aforesaid, to come forward and make, under oath, full and true answers to the several charges, matters, and things contained in this, your orator's cross bill, as if particularly set forth in the form of interrogatories, and addressed to them severally; and that publication be made according to law, and the rules of this honorable court, requiring such of the complainants aforesaid, and the trustees aforesaid, as reside beyond the limits of the jurisdiction of this honorable court, also to come forward within the time prescribed by law, and true answers make, upon oath, to this cross bill as aforesaid; and that this bill, if they fail so to do, be taken pro confesso.

And your orator further prays your honor to require the complainants aforesaid, and the trustees aforesaid, to deliver up to this honorable court the paper writing purporting to be the act of the said Thomas M. Blount, as the attorney in fact of your orator, but which your orator charges, as

in this cross bill aforesaid, to be fraudulent, unauthorized, and illegal, and of no binding obligation whatever upon your orator, to be cancelled and destroyed.

And your orator further prays your honor to enjoin the complainants and the trustees aforesaid, and all other persons whatsoever, from using, either at law or in equity, against your orator, the aforesaid fraudulent, unauthorized, and illegal deed of release, and to decree that your orator be placed in the same position in regard to his rights and demands against the complainants aforesaid, and the trustees aforesaid, as he was prior to the attempt aforesaid, to defraud him of his just rights and demands.

Your orator further states, that he has been permitted at no time to have any control over the money which is alleged to have been received from the complainants aforesaid, and the trustees aforesaid, by the said Thomas M. Blount, and that he would not have received the money even had it been tendered, because he viewed the whole transaction as void *ab initio*. He therefore humbly insists, that he shall not be held accountable for the said money, in any way or degree whatsoever, but that this court of chancery shall blot out the whole transaction as fraudulent and collusive, and restore your orator to his pre-existing just rights, as set forth in this his cross bill.

And your orator further stating, that the said Thomas M. Blount has left with James Catlin, esquire, of the city of Pensacola, sundry papers necessary to the elucidation of the subject matter of this cross bill, and some of which were left in the hands of the said Blount by your orator, and all of which were designed for your orator, but which he declined receiving when he became aware of the fraudulent nature of the whole case, he prays your honor to grant unto him the Territory's most gracious writ of subpœna duces tecum, requiring the said Catlin to bring the papers aforesaid into court, and place them at the disposal of the same.

And your orator will ever pray, &c.

WALKER ANDERSON,
Solicitor of complainant of this cross bill.

TERRITORY OF FLORIDA, *Escambia county:*

On this day, the 12th June, 1840, before me, in open court, John Innerarity appeared and made oath, that he had read the preceding cross bill, and knew the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on the information of others, and his own belief; and that as to those matters, they are believed by him to be true. JOHN INNERARITY.

Sworn to and subscribed in open court, this 12th day of June, 1840.
WM. WASHINGTON J. KELLY, *Clerk.*

JOHN INNERARITY, adm'r of John Forbes,
versus
JOHN CARNOCHAN and others. } Cross bill.—At chambers.

In this case let order of publication be made, and let a subpœna duces tecum issue to James Catlin, as prayed for in said bill.

June 23, 1840. DILLON JORDAN, *Judge.*

DISTRICT OF WEST FLORIDA,
Escambia county, superior court:

JOHN INNERARITY
vs.
JOHN CARNOCHAN, Peter Mitchell, Louis McLane, Charles Augustus Davis, Lewis Curtis, and George Griswold. } In chancery.—Cross bill.

It appearing by satisfactory evidence that the respondents are not inhabitants of this Territory, it is ordered, that the said respondents do appear here, on the first Monday of November next, and answer the bill of the complainant, and that a copy of this order be forthwith inserted in the Gazette published in the city of Pensacola for four months successively.

6 *July*, 1840. WM. W. J. KELLY, *Clk.*

Statement of the amount due on the mortgage by the Apa. Land Co. June 11th, 1840.

1st instal., 8 Dec , 1820	$12,500 00
20 p. c. damages for protest	2,500 00
10 p. c. exchange	1,500 00
Interest at 8 p. c., 19 yrs. 6 mo. 4	25,654 70
2 instal., 8 Dec'r, 1821	12,500 00
10 p. c. exchange	1,250 00
Int. at 8 p. c., 18 yrs. 6 4	20,362 22

Terms of the settlement of Thomas M. Blount with the trustees, &c., on 19th Sept., 1839.

Cash said to be received and acknowledged	$13,357 73
Admitted to be due	8,525 38
	$21,983 11

Credits claimed by complainants as of cash actually paid.

2 payments to James Innerarity	$4,761 67½
Int. at 8 p. c. to 11 June, 1840	6,200 97½
Payment to Wm. H. Forbes	7,841 01
Int. at 8 p. c. to 11 June, 1840	10,454 67
	$29,258 33

JOSEPH M. WHITE, Louis McLane, and Charles A. Davis, trustees, &c.,
vs.
JOHN INNERARITY, adm'r of Wm. H. Forbes and James Innerarity. } In chancery.

To the honorable Dillon Jordan, judge of the district of West Florida for the county of Escambia, in chancery sitting:

Humbly complaining, sheweth unto your honor, your orator, Richard

Carnochan, of the city of Charleston, and State of South Carolina, and of the complainants in the bill of complaint heretofore filed in the case aforesaid, being a stockholder and member of the company represented by the trustees aforesaid, sheweth, that at some time subsequent to the filing of said bill of complaint, to wit, in the month of September, 1839, one Thomas M. Blount, of the city of Pensacola, by virtue of an instrument of writing from one of the defendants in said suit, received from the trustees aforesaid, on account of the claims of the defendants aforesaid, a large sum of money, to wit, a sum exceeding thirteen thousand dollars, for which the trustees aforesaid have the acknowledgment of the said Blount.

Your orator further shows to your honor, that he has been informed that the defendant in said writ, who gave the power of attorney to the said Blount, has disavowed the act of the said Blount on grounds which he has set forth in a cross bill filed in this suit, and on the records of this honorable court, and has refused to receive the money aforesaid, and has prayed of this honorable court to cause a certain release, given by the said Blount to the said trustees, to be brought into court, to be annulled and cancelled; that a large portion of the money aforesaid was placed by the said Blount in charge of the Bank of Pensacola, to be paid over to the defendant aforesaid, the exact amount of which is set forth in a check on said bank, drawn by the said Blount, in favor of James Catlin, and now filed among the papers of this suit; and which check, together with other papers connected therewith, and explanatory of the same transaction, your orator prays may be taken as a part of his bill.

Your orator would further show, that neither your orator nor the trustees who represent his interest have, without the interference of this court, any control of this money; and inasmuch as it has not been applied to the purpose for which it was designed, your orator, without admitting, in any degree, the informality or invalidity of the acts of the aforesaid Blount, in his dealings with the trustees aforesaid, and expressly claiming that he be not prejudiced, now, or at any future time, by his present prayer, in the decision which this honorable court may make on the cross bill aforesaid; yet desiring to preserve the aforesaid sum of money within the control of the court, for the benefit of the party or parties to whom it justly belongs, and fearing, from the fact that the said Blount has no tangible property, within the knowledge of your orator, which would make him a sufficient surety for the sum, if wasted or misapplied, and that the said Bank of Pensacola is in embarrassed circumstances, so as to make the mixing of the sum of money entrusted with it as aforesaid with the general business of the bank, hazardous, and impairing its safe keeping, and regarding the said sum of money as a sacred deposit, given in *trust* to the said bank for the benefit of the parties litigant in this honorable court, and whose equitable rights are under its protection, prays, therefore, your honor to order a writ of injunction to issue from this court, enjoining the said Bank of Pensacola to hold the said sum of money in the same state and condition in which it was when first entrusted to its charge, and keep it subject to the order of this

honorable court, and from paying it over to any one whatever, or make any disposition of it whatever, without the order and consent of this honorable court.

Your orator further prays, that the said Thomas M. Blount be made a party defendant to this bill, and that a writ of injunction be issued enjoining the said Blount from withdrawing or in any wise exercising any control over the aforesaid sum of money now deposited in trust in the Bank of Pensacola. And your orator will, &c.

RICHARD CARNOCHAN,
By WALKER ANDERSON,
His special att'y for filing this prayer.

Walker Anderson, attorney of Richard Carnochan, makes oath, that the facts set forth of his own knowledge in the foregoing bill are true, and those on the knowledge of others he believes to be true.

WALKER ANDERSON.

Sworn and subscribed before me.

DILLON JORDAN, *Judge.*

DISTRICT OF WEST FLORIDA, *Escambia county, ss:*

To the marshal of West Florida, greeting:

We command you that you summon James Catlin, of the city of Pensacola, to appear before the judge of our superior court of law for West Florida, now sitting at chambers, in the city of Pensacola, with certain papers left with him by Thomas M. Blount, necessary to the elucidation of the subject matter in controversy between James Innerarity and John Carnochan and others, then and there to testify, and the truth to say, in behalf of John Innerarity.

Hereof fail not, under the pain of the law; and have you then and there this writ.

Witness William W. J. Kelly, clerk of our said court, at the court-
[SEAL.] house aforesaid, this 6th day of July, A. D. 1840.

WM. WASHINGTON J. KELLY, *Cl'k.*

Received, July 6, 1840, and executed by reading and explaining this summon to James Catlin this 6th day of July, 1840.

C. EVANS,
U. S. Marshal.

JOHN INNERARITY
versus
JOHN CARNOCHAN & others. } At Chambers.

In this case it is ordered, that James Catlin file with the clerk of this court the following papers, viz: subject to the future action which the court may take in reference to them.

July 6, 1840. DILLON JORDAN, *Judge.*

In Chambers, Escambia county, district of West Florida.

It appearing to the court by bill filed by Richard Carnochan, one of the complainants in the case of Louis McLane, Joseph M. White,

Charles A. Davis, trustees of the Apalachicola Land company, vs. John Innerarity, administrator of William H. Forbes and James Innerarity, praying for a writ of injunction enjoining the bank of Pensacola to keep, subject to the order of this court, a certain sum of money deposited with said bank, and in controversy between the parties to the said suit, and particularly set forth in said bill, that the prayer in said bill is reasonable and based upon sufficient grounds, it is ordered that the bank of Pensacola be enjoined to hold the said sum of money as specified in a check heretofore filed in this court, drawn by Thomas M. Blount in favor of James Catlin, in the same state and condition as when deposited, and subject to the further order of this court. It is further ordered, that Thomas M. Blount be made a party to this bill, and that the said Bank of Pensacola be enjoined not to pay over the said money to the order of said Blount, or in any otherwise to dispose of the same, but to hold the same subject to the order of this court; and that the said Blount be enjoined from checking or drawing for the same, or in any way assuming or directing the control thereof.

DILLON JORDAN,
Judge U. S. D't of West Florida.

Oct. 23, 1840.

DISTRICT OF WEST FLORIDA, *Escambia county:*

To the bank of Pensacola, the president and cashier, and the marshal of West Florida, greeting:

Whereas, it hath been represented to our superior court of chancery in a certain cause therein depending, wherein Joseph M. White, Louis McLane and Charles A. Davis, trustees, &c., are complainants, and John Innerarity, administrator of William H. Forbes and James Innerarity are defendants, on the part of the said complainants, that one Thomas M. Blount, of the city of Pensacola, by virtue of a certain instrument of writing from one of the defendants, received from the trustees aforesaid a large sum of money, exceeding thirteen hundred dollars; that a large portion of the money aforesaid was placed by the said Blount in charge of the Bank of Pensacola, to be paid over to the defendants aforesaid. We, therefore, in consideration of the premises aforesaid, do strictly enjoin and command you, the said Bank of Pensacola, the president and cashier, all and every of you, that you and every of you do from henceforth altogether absolutely refuse to pay over the moneys aforesaid, to the said Blount or his order, or in any otherwise to dispose of the same, but to hold the same subject to the order of our said court, in the same state and condition as when deposited. And that the said Blount is hereby enjoined from checking for the same, or in any manner assuming or directing the control thereof. And you the said marshal will make return of this to our honorable court, on the first Monday of November next.

Witness W. W. J. Kelly, clerk of our said court, at the court-house, in Pensacola, this 23d day of October, A. D. 1840.

WM. WASHINGTON J. KELLY, *Cl'k.*

Received, October 23d, 1840, and executed by delivering to Hanson Kelly, esq., acting president of the Bank of Pensacola, a true copy of this writ, this 23d day of October, 1840.

C. EVANS, *U. S. Marshal.*

District of West Florida, Escambia county, at Chambers, in chancery, 1 Monday in February.

Whereas the plaintiff did, on the 12 June, 1840, exhibit his cross bill of foreclosure against the defendants, setting forth, among other things, a mortgage on certain lands therein described, to secure the payment of a certain sum of money due by the defendants to the plaintiffs, and also his other cross bill against the defendants, setting forth, among other things, a certain illegal release fraudulently obtained by the said defendants, and therefore praying process of subpœna against said defendants to compel them to appear and answer the said bills, and that the aforesaid mortgage might be foreclosed, and the aforesaid release might be cancelled; and for as much as the plaintiff, having sued out an order upon the defendant, not being resident of this Territory, to compel the defendants to appear to and answer the said bills, and it appearing, by affidavit, that the said order has been published in the manner and for the time required by law, and three months further time having been allowed the defendants to answer, and that period having elapsed on this day, and the defendants still persisting in their contempt upon hearing of the plaintiff, it is decreed that the two cross bills aforesaid be taken pro confesso; and it is further ordered, that reference be made to the clerk as master, to see what is due for principal and interest on the mortgage aforesaid, and to tax them their costs, and the defendants to pay unto the plaintiff what shall be reported due to him for principal and interest, and costs.

JOHN INNERARITY, adm'r
vs.
JOHN CARNOCHAN and others. } At Chambers.

In this case, it has been made to appear to the satisfaction of the court, that publication has been duly made, and that defendants have failed to appear and answer, plead or demur, to the bill of complaint in this case filed; it is therefore ordered, that the same be taken pro confesso, and hear ex parte. That the said cause be set for hearing on the first Monday in August next. It is further ordered, that reference be made to the clerk and master in chancery, to ascertain and report what balance of the mortgage debt is due; and that he submit said report for confirmation on the first Monday in August next.

JOHN INNERARITY, adm'r of Wm. H. Forbes, and James Innerarity, compl'ts,
versus
Thomas M. Blount and others. } November 20, 1840.—In chancery.

This day came the complainants, by their counsel, and the subpœna, awarded in this cause being returned executed on the defendants, and

they still failing to file their answers, although the time required by law has elapsed, as well since the complainants filed their bill, as since the service of the subpœna upon the defendants, on the motion of the complainants their bill is taken for confessed as to the said defendants, and the court will proceed at a future day to decree the matter thereof, unless the said defendants file their answer within three months from the date of the entry of this decree.

And at another day, to wit, on the first day of March, A. D. 1841, the said master made his report as follows:

District of West Florida, Escambia county, superior court, March 1, 1841.

To the honorable Dillon Jordan, judge of the superior court for the district of West Florida, Escambia county, sitting at Chambers, in the city of Pensacola, respectfully, as master in chancery appointed by an interlocutory order of this honorable court, to state an account of the balance due upon a mortgage given by Octavius Mitchel to John Forbes upon certain property which was afterwards transferred to the Apalachicola Land Company, in obedience to said order, sheweth unto your honor, after an examination of the bill and exhibits, a full statement of the debts and credits, with a full statement, with the balance of principal and interest due up to the 8 March, 1841, which will more fully appear by reference to an account current hereto annexed, to wit:

The Apalachicola Land Company in account with John Innerarity, administrator of John Forbes, deceased.

	Dolls. cts.	Alleged payments.	Dolls. cts.
First instalment on the debt secured by mortgage, due on 8 Dec., 1820 - -	12,500 00	*First payment to James Innerarity, May 31, 1823 -	2,680 81
20 pr. cent. damages for protest of same - -	2,500 00	Int. on ditto at 8 pr. cent, -	3,806 66
10 pr. cent. exchange on ditto	1,500 00	Second payment to James Innerarity, Feb'y 13, 1825	2,080 17
Int. on do. to 8 Dec., 1822, at 8 per. ct. pr annum -	2,640 00	Inter. on ditto, at 8 per cent.	2,669 49
Int. from 8 Dec., 1822, to 8 March, 1841, at 8 per cent. per annum - -	24,090 00	Paym't to W. H. Forbes, Oct. 11, 1823 - -	7,841 01
		Interest on ditto, at 8 per cent. - - - -	10,898 98
			29,877 12
2d inst. on debt secured by mortgage, due 8 Dec. 1821	12,500 00	By balance due - -	48,277 88
10 per ct. exch. on do. -	1,250 00		78,155 00
Int. on do. to 8 Dec., 1822, at 8 pr. ct. of - -	1,100 00		
Int. on do., from 8 Dec., 1822, to 8 March, 1841, at 8 pr. cent. - - -	20,075 00		

*The two first payments are admitted.

All of which is respectfully submitted.

WM. WASHINGTON J. KELLY.
Master in chancery.

A release given by Thomas M. Blount, esq., having been cancelled by order dated first Monday in February, 1841, no reference is made to it in the report; but the plaintiff in the cross bill is credited with the amount appearing to be due without any regard being had to said release.

WM. WASHINGTON J. KELLY,
Clerk and master in chancery.

And at another day, to wit, on the 9th day of April, 1841, came George Griswold and Lewis Curtis, by Thomas Baltzell, their solicitor, and filed their supplemental bill, which is in the words and figures following, to wit:

To the honorable the judge of the superior court for the county of Escambia, in the Territory of Florida, sitting in chancery:

Humby complaining, sheweth unto your honor, your orators, George Griswold and Lewis Curtis, trustees of the Apalachicola Land Company, that on or about the day of they and others filed their original bill of complaint in this honorable court against John Innerarity, William H. Forbes, and James Innerarity, as by the record and proceedings remaining in said court fully appears, to which said John Innerarity filed his answer.

Your orators would shew, by way of supplement, that, on the nineteenth day of September, in the year 1839, the solicitor of defendant, Innerarity, the administrator of John Forbes, Thomas M. Blount, esq., who was also the legally constituted agent and attorney of said John Innerarity, administrator as aforesaid, as will appear by a power of attorney, filed herewith, and prayed to be taken as part of this bill, made his certain acknowledgment in writing and release under his hand and seal, whereby he admitted he had received four thousand eight hundred and eighty-two dollars thirty-five cents, being the balance due upon a protested bill of exchange of Colin Mitchel, which was given for the payment of the instalment due the 8 December, 1820, on said mortgage, and also the said attorney acknowledged to have received the additional sum of eight thousand five hundred and twenty-five dollars thirty-eight cents, in full payment of one-half of the last instalment due upon said mortgage. And the said solicitor, and agent, and attorney, in consideration of the receipt of the said sums, amounting together to thirteen thousand three hundred and fifty-seven dollars seventy-three cents, did release and discharge the mortgage for one-half of the amount appearing to be due thereon, and released and discharged the mortgagor and all persons interested in said mortgage premises, from any further payment on account of one-half of the amount due upon said mortgage, as by the said release and acknowledgment, filed herewith, and prayed to be taken as part hereof, will more fully and at large appear.

And your orators had well hoped that said John Innerarity, the administrator of John Forbes, aforesaid, would have ordered satisfaction, agreeably to the act of his said solicitor, for the amount so received, and would have ceased to make any demand or claim on account thereof;

but the said administrator contriving to oppress, harass, and defraud your orators in this behalf, altogether refuses so to do, and insists that no payment has been made, and no discharge given, and would entirely disaffirm, deny, and repudiate the acts of his said solicitor, agent, and attorney. All which actings and doings of said Innerarity are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators in the premises. To the end, therefore, that said John Innerarity be required to answer this supplemental bill of your orators, as fully and completely as if thereto interrogated; that he may say whether Thomas M. Blount, esq., was his solicitor, and managed and defended his said suit in chancery for him in filing the answer and other steps in the case? Whether he filed a bill for said Innerarity in reference to the same subject? Whether the release filed herewith is the proper release of said Blount, and under his hand and seal? Whether he received said sums of money, as acknowledged by said release?

Your orators pray that said release be confirmed by a decree of this honorable court, and that a satisfaction of one-half of the mortgage be decreed, in pursuance of said agreement, and that your orators may have such other and further relief extended to them in the premises as their case may require.

May it please your honor to award the writ of subpœna, directed, commanding, &c.

THOMAS BALTZELL,
Sol. for compl'ts.

Filed 9 April, 1841.

In the name of the Territory of Florida, to John Innerarity, greeting:

You are hereby commanded and strictly enjoined, that, laying all other business aside, and notwithstanding any excuse, you personally be and appear before the judge of our superior court of chancery for the district of West Florida, on the first day of our next term, wherever the court may then be, to answer George Griswold and Lewis Curtis, trustees of the Apalachicola Land Company, of a supplemental bill of complaint exhibited against you in our said court, and to do further, and receive what our said court shall have considered in that behalf; and this you shall not omit under the penalty of five hundred dollars.

Witness the honorable Dillon Jordan, judge of our said court, the 9th day of April, A. D. 1841.

Rec'd April 9th, 1841, and executed Ap'l 10, 1841, by delivering to John Innerarity, esquire, a true copy of this subpœna.

(Signed,) C. EVANS, *U. S. Marshal.*

Louis McLane and Charles A. Davis, trustees, &c., vs. John Innerarity, adm'r of John Forbes, and James Innerarity. } Bill in chancery.

Escambia superior court, May term, 1841.

The plaintiffs come and say that they will no further prosecute their said bill—the bill filed by defendants in same court against Carnochan

and others, for the same object, being adequate for the same purpose. They therefore ask that the same be dismissed.

THOMAS BALTZELL,
At'y for compl't.

Filed 18 May, 1841.

The trustees of the Apalachicola Land Company, ads. JOHN INNERARITY, adm'r of John Forbes. } In chancery.

On bill and cross bill.

The complainant is notified to produce, and file amongst the papers, the letter of Edmund DePestre, for himself, and as agent of Francis Dalcour, ex'r of John Forbes, dated Mobile, 6 December, 1836, addressed to John Innerarity, Pensacola, in reference to the mortgage on the said tract of land; also alluding to a letter of John Forbes to James S. Pott, dated 8 Dec., 1819, and advising him to pay to Carnochan, if said letter is not produced.

Complainant is notified to produce on the trial the books of the said Forbes, in reference to said transaction, or to furnish a copy of said letter. Also to file among the papers the account presented to him by Thomas M. Blount, for professional services, and the amount claimed by him on the receipt of said money, and all the letters addressed by him and to him on the subject aforesaid.

THOMAS BALTZELL,
Att'y for defendants.

Service acknowledged by JOHN INNERARITY.
Filed 24 May, 1841.

CARNOCHAN, &c. ads. INNERARITY. } Amended exceptions.

Escambia superior court, May, 1841.

The defendants except to the report of the master in this:

1st. That the first instalment of $ is stated by his report to be due on the 8 Dec. 1820, and interest is calculated accordingly, when, by the mortgage, said instalment is not due until the 9th May, 1821.

2nd. That the second instalment is stated by said report to be due on the 8th day of December, 1821, when by the mortgage it is not due until the 9th day of March, 1822.

3rd. That interest is not due on these amounts until after these periods, and not at the times stated by said report.

4. That interest is not due on said sums, because, by plaintiff's own shewing, the executors of Forbes refused to receive the money, and he did not administer until the day of and these defendants filed their bill, and were ready to have paid on the day of

5th. That these bills of exchange should not have been noticed by the master, because they are not alleged to have been connected with the mortgage, or to form a part of the transaction; they were given pre-

viously by another individual, do not form a claim against the mortgager, Octavius Mitchel, his assigns, who were alone bound by notice of the mortgage. If due, as claimed, there is no allegation of notice of protest to any of the parties, in which event alone plaintiff was entitled to damages.

6th. That to entitle plaintiff to any thing on said bills, either interest or damages, they should be produced; and in the said bill there is no allegation of loss, and that no should pass without indemnity.

7th. That the payment to plaintiff's attorney should have been allowed, and not rejected.

8th. That the other credits should have been allowed as claimed by defendants.

THOMAS BALTZELL,
Sol'r for defendants.

Filed 13 May, 1841.

JOHN CARNOCHAN, ads. JOHN INNERARITY, ad. &c. } In chancery.

Superior court, May term, 1841.

To the honorable the judge of the superior court for the county of Escambia:

The petition of the respondents, John Carnochan, Lewis Curtis, and George Griswold, trustees of the Apalachicola Land Company, would respectfully shew to your honor, that on the first Monday in February an order was obtained by the complainant Innerarity, in substance as follows, (here set forth the order) as by reference to the papers on file will fully appear; that said order has never been signed by your honor, nor entered of record, and they humbly insist they are not legally bound by it.

Your petitioners would further represent to your honor, that said order was unadvisedly granted, the said party not being entitled thereto on principles of law, equity, nor justice, nor according to the rules of chancery practice; and they allege the following as objections thereto:

That these defendants were not properly and legally notified of the institution of said suits; publication was not made agreeably to law, nor was there affidavit made in said cases to entitle the party to orders of publication, or to the decree pro confesso; the said orders were made without authority, and were not published a sufficient length of time—did not comply with the statute in point of form; one of the orders was directed to defendants, giving notice of the institution of a suit individually, and did not justify the rendering a decree against them in their representative character; the orders of publication themselves represent the parties as non-residents, when John Carnochan, one of the defendants, is a resident and citizen of the Territory of Florida, to whom personal notice should have been given; that the statute law of the territory, in other respects, has not been complied with, nor the rules of chancery practice observed; the said parties had an attorney in the territory to whom personal notice of the institution of said suits should have been given.

That said interlocutory decree was unadvisedly given; in this, that it states a cross bill of foreclosure, setting forth a mortgage on certain lands therein described, and another cross bill, setting forth another certain illegal release fraudulently obtained by said defendants, when in truth, and in fact, there are no such cross bills amongst the papers, and the allegation of fraud in obtaining such release is so palpably and evidently without pretext, or support of verity, as that the court cannot lend its sanction or countenance to it; that the plaintiff has, in effect, opened the decree, by taking the deposition of to impeach the release.

That said complainant is not entitled, upon his said bills, to any decree against these defendants, not having set forth a sufficient case to entitle him to relief; that he is not entitled to decree of foreclosure on the mortgage filed; in this, that by his bill he claims "a tract of land" to have been mortgaged to his intestate, described "as all that tract of country between the Apalachicola and Saint Mark's rivers, known by the name of Forbes' purchase," when the mortgage filed in the papers is "of the undivided half of the tract of land which he the said Octavio Mitchel just purchased of John Innerarity;" "which tract of land is situated on the eastern side of the river Apalachicola, and river St Mark's, of Apalachee," being another and different tract of land.

That there is no allegation in said bill, of such interest in said defendants, as that plaintiff is entitled to a decree against them; that the bill states that Davis & White have the title vested in them as trustees, and also that Griswold and Curtis are trustees, so that it is uncertain who are the true parties.

That the heirs of William Panton, and of Forbes and John Forbes, should have been made parties to the bill, and that a tender of reconveyance should have been made; and that no final decree can be made without them.

That the superior court of this county hath not jurisdiction of these various bills, the land not lying in this district, and the parties residing out of this jurisdiction, and the court having no process by which they can enforce their decree in this behalf; that said Innerarity does not set forth whether he is administrator, with the will annexed, of John Forbes.

Your petitioners would further show unto your honor, that they have desired to bring said cases to a trial, and have made suitable and adequate arrangements therefor, but that, through circumstances beyond their control, which will in due time be made known to your honor, they have been prevented; they therefore pray that the orders be reversed, set aside, and held for naught—that the cause be opened, and permission given to the defendants to file answers.

THOMAS BALTZELL,
Solicitor for compl't.

JOHN INNERARITY, administrator, &c.,
vs.
Trustees of APALACHICOLA LAND CO.
May 18, 1841—In chancery.

Upon motion and affidavit it is ordered, that the decree, pro confesso,

rendered in this case be set aside, and leave granted to defendants to answer and try at this term, upon payment of all costs incurred up to this time, with leave to complainant to amend his bill.

JOHN INNERARITY, administrator of John Forbes, deceased, vs. APALACHICOLA LAND COMPANY & THOMAS M. BLOUNT, defendants. — May 18, 1841—In chancery—cross bill.

On motion and affidavit it is ordered, that the decree, pro confesso, rendered in this case be set aside, and leave granted to defendants to answer and try at this term, upon payment of all costs incurred up to this time, with leave to complainant to amend his bill.

JOSEPH M. WHITE and others, complainants, vs. JOHN & JAMES INNERARITY, defendants. — May 27, 1841—Original bill.

And

LEWIS CURTIS & GEORGE GRISWOLD, comp'ts, vs. JOHN INNERARITY, administ'r of John Forbes, deceased, defendant. — May 27, 1841—Supplemental bill.

On motion of the complainants it is ordered, that these cases be dismissed at the costs of the complainants.

JOHN INNERARITY, administ'r of John Forbes, deceased, compl't, vs. Trustees of APALACHICOLA LAND CO., def'ts. — May 27, 1841—In chancery.

In this case leave is granted to defendants to answer on the first Monday of July next, and that the last Monday in September next be set for a final hearing in this case.

JOHN INNERARITY, complainant, vs. APALACHICOLA LAND CO., defendant. — 29 May, 1841—In chancery.

In this case the master in chancery is allowed seventy-five dollars for his services and report.

The undersigned excepts to the report filed by the master, entitled the Apalachicola Land Company in account current with John Innerarity, administrator of John Forbes, deceased.

1st. The report itself, on its face, shows such excess in its allowance, as at the first blush of it to show impropriety; in particular, objection is made to the damages, to the exchange and interest as being wholly unauthorized by law, as illegal, unjust, and improper.

2d. The bill of exchange was not produced to the master; has not been filed; no proof of protest, or of damages, nor any law as to the rate

of damages, exchange, or interest; defendant insisting that neither interest, damages, or exchange, are due or demandable.

3rd. The appointment of the master was wholly unauthorized, improper, illegal, and void.

4thly. The parties have been taken by surprise.

5th. Because the payment to Blount was not admitted. Wherefore defendant moves to set the said report aside, and that the same be held for naught.

April 19, 1841. THOMAS BALTZELL,
Sol. for John Carnochan and trustees of Apal'a Land Co.

Filed, 23 March, 1841.

INNERARITY
vs.
Trustees of the AP. LAND CO. } In chancery.

Cross bill of foreclosure and cross bill.

To the master's report in this case the complainant files the following exceptions:

1. The interest account in the report is on a wrong basis. Payments made in part should be applied first to the liquidation of the interest due at date of payment, and the residue to the reduction of the capital.

2. No proof exhibited of the payment to W. H. Forbes, for which credit is allowed in the report.

3. The decimer, or ten per cent. on the whole amount, is not allowed in the report according to the Spanish laws under which the mortgage was given.

ANDERSON,
Filed 20 April, 1841. *Solicitor for plaintiff in cross bill.*

JOHN INNERARITY
vs.
APALACHICOLA LAND CO. } Cross bill.

In this case the plaintiff objects to the master's report, in addition to objections already filed, because no allowance is made to the plaintiff for his costs and charges in prosecuting his claim, as by the laws of Spain and [the] United States ought to be allowed.

W. ANDERSON,
Filed, 23 April, 1841. *Atty. for plff.*

APALACHICOLA LAND CO.,
vs.
INNERARITY.

In this case the parties agree to apply for a rule on T. M. Blount, to pay over the money into court he has received from trustees, without prejudice to either rights in the suits now pending.

At the May term, 1841, Escambia c'y, Ter. of Fl.

W. ANDERSON,
For Innerarity.
THOMAS BALTZELL,
Filed, 1 June, 1841. *For Apal'a Land Co.*

JOHN INNERARITY, administrator of John Forbes,
vs.
LEWIS CURTIS and George Griswold, trustees of the Apalachicola Land Company.

United States superior court of law for the district of West Florida, sitting in chancery for Escambia county, at Pensacola, May term, 1841.

In this case, upon the application of both the parties by their attorneys, it was ordered that a rule be served upon Thomas M. Blount to pay into this court a certain sum of money in controversy between said parties, which sum of money, to wit, the sum of thirteen thousand three hundred and fifty-seven dollars and seventy-three cents, was received by the said Blount from the said Apalachicola Land Company, and a receipt therefor given by him, and a release of the mortgage by which it was received in the name of John Innerarity, and which is more fully set forth in the papers filed in this suit; and the said sum remain in court, there to abide the event of this suit.

To THOMAS M. BLOUNT, *attorney at law.*

In conformity with the foregoing order you are hereby enjoined to shew cause, on the first Monday in September next, why this rule should not be made absolute.

Witness the hon. Dillon Jordan, judge of our said court, this the 27th day of July, A. D. one thousand eight hundred and forty-one, and seal of said court.

WM. W. J. KELLY, *Clerk*,
By CAMERON ANDERSON, *Dep. Clerk.*

Filed 28 July, 1841.

United States of America, district of West Florida, Escambia county superior court, sitting in chancery at Pensacola, May term, 1841.

JOHN INNERARITY, administrator of John Forbes,
vs.
LEWIS CURTIS and George Griswold, trustees of the Apalachicola Land Company.

Rule on Thomas M. Blount.

In this case, upon the application of both the parties by their attorneys, it was ordered that a rule be served upon Thomas M. Blount, esquire, to pay into this court a certain sum of money in controversy between the said parties, which sum of money, to wit, the sum of thirteen thousand three hundred and fifty-seven dollars and seventy-three cents, was received by the said Blount from the said Apalachicola Land Company, and a receipt therefor given by him, and a release of the mortgage by which it was received, in the name of John Innerarity, and which is

now fully set forth in the papers filed in this suit, and the said sum remain in court, there to abide the event of this suit.

To THOMAS M. BLOUNT, *attorney at law.*

In conformity with the foregoing order, you are hereby enjoined to shew cause on the first Monday in September next, why this rule should not be made absolute.

Witness the hon. Dillon Jordan, judge of our said court, this 27th day of July, A. D. 1841.

WM. WASHINGTON J. KELLY,
Clerk U. S. D. W. F. Escambia county.

STATE OF NEW YORK,
City and county of New York, ss.

Isaac Kip, a deputy sheriff in and for the city and county of New York, being duly sworn, deposeth and saith, that on the twenty-third day of August, he personally served Thomas M. Blount with a copy of the within order, by delivering the same to him, and at the same time exhibiting to him the within original order.

I. KIP.

Sworn this 24 August, A. D. 1841, before me,

M. ULSHOEFFER,
Pd. Judge common pleas of New York, a court of record and law.

STATE OF NEW YORK,
City and county of New York, ss.

I, Nathaniel Jarvis, clerk of the city and county of New York, and clerk of the court of common pleas for the said city and county, (said court being a court of record,) do hereby certify, that Michael Ulshoeffer, before whom the annexed deposition was taken, was at the time of taking the same first judge of the New York common pleas court, said court being a court of record in and for the said city and county, duly appointed and sworn, and authorized to take the same, and that I believe the signature of said Michael Ulshoeffer thereunto subscribed is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said court and county, the 24th day of August, 1841.

NATH'L JARVIS, *Clerk.*

Filed September 3, 1841.

And at another day, to wit, on the 27 day of June, 1841, came Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company, and filed their answer to the cross bill exhibited herein, which said answer is in the words and figures following, to wit:

Answer.

To the honorable Dillon Jordan, judge of the superior court for Escambia county, in the western district of Florida, sitting in chancery.

The answer of Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company, to the cross bill of complaint filed in this honorable court by John Innerarity, administrator of John Forbes.

These respondents, saving and reserving to themselves all benefit of exception to the many errors, mis-statements, and deficiencies in said

bill, and also insisting that there is no matter of equity therein for which the same should be sustained, but should on account thereof be dismissed, for answer thereto, or as much thereof as they are advised is material for them to answer unto, they answer and say: That they know nothing of their own knowledge of the articles of agreement alleged in said bill to have been made between John Forbes, acting executor of William Panton and Thomas Forbes, nor of the price of said tract of land; they admit that a portion thereof belonged to John and James Innerarity, from the fact of the existence of a transfer from said parties. These respondents admit a transfer by said Forbes, thro' his agent Carlos Reggio, to Colin Mitchel, of the tract of land stated in said bill, as will appear by reference to the deed executed by said agent, and if necessary made a part hereof.

These respondents admit the execution by Octavius Mitchel, on the 9 Sept., 1820, of a mortgage on the undivided half of a tract of land described as being the same tract sold by John Innerarity to Octavius Mitchel—said mortgage given to John Forbes to secure the payment of twenty-five thousand dollars, the one-half payable in eight months, the other half payable in eighteen months from date, as by reference to the same, a copy whereof is filed amongst the papers, will fully appear.

These respondents do not admit the existence of a bill of exchange, as alleged in complainants' bill, nor that it was protested, nor that notice thereof was given to the said parties, having no knowledge thereof, except from hearsay, and insisting on proof of the same, and if established, that these respondents are not liable therefor, their engagement not extending beyond the terms of the mortgage; and the lands in the hands of innocent purchasers, without notice, as they allege themselves to be, not being responsible, according to law, for any private transactions between antecedent parties. That if there is a liability on the said bill, it is at law against the parties thereto, and not against these respondents, who are in no wise privies to its existence, nor bound in any way to have taken notice of it.

These respondents do not admit, that the sum of twenty-five thousand dollars was due on said mortgage, at the time of its execution, but that the same was and is subject to a credit of three hundred and seventy-five pounds, overpaid in London in 1818 or 1819, and which was directed by said John Forbes to be repaid, by his letter addressed to James S. Pott, dated 8 December, 1819, admitted by Edw'd Depestre, executor of said Forbes, in a letter dated , copies of which will in due time be filed, and are prayed to be taken as parts hereof.

These respondents would state to your honor, that payments have been made to James Innerarity and William H. Forbes, as set forth in the answer of these respondents to the bill of complainant, praying a foreclosure, which answer is prayed to be taken as part hereof, together with the bill and other papers in said case.

Respondents admit the taking out letters by the complainant of administration on the day of , until which time there was no one to accept payment of the amount of said mortgage, the executors

of Forbes having refused to receive the same, as set forth in complainants' bill aforesaid, and these complainants were not compelled to go out of the country to seek them.

Respondents do not admit, that they are subject to the payment of damages nor interest, as contended for in said bill, but refer to said answer for objections thereto, insisting also, that if disposed to settle upon such terms heretofore, it was by way of compromise, and under a mistaken opinion of their rights, and that they are in no wise bound by their previous proffer.

These respondents further answering say, that they paid, on the 19 day of September, 1839, at New York, the sum of thirteen thousand three hundred and fifty-seven dollars 73 cents, to Thomas M. Blount, the attorney in fact of complainant, who was also his solicitor and attorney for the foreclosure of said mortgage, whose receipt and power is also filed with the papers; and also gave a bond, payable on certain contingencies, for the sum of five thousand dollars, to said complainant, which is also filed with the papers.

These respondents do not admit, that said Blount "altogether transcended his authority, and undertook to give a release of a part of the security held by complainant, vastly out of proportion to the amount received;" on the contrary, they are advised, that in the settlement made between them and said Blount, allowances were made of interest and damages beyond what complainant is justly entitled to, and which, if admitted, would make the release too small in amount by a considerable sum. If there is an excess or error in the statement of the proportion which should have been released, respondents submit, that it is one of calculation merely, about which there could not well be positive certainty, and the fault is with the agent of complainant, and the consequences should be visited on complainant, or his agent, and not upon respondents, who had no charge, either of complainant's rights or his interests.

Respondents expressly deny, that any improper advantage was either taken, or designed to be taken, by them of said Blount, or of said complainant; their desire has been to settle the mortgage; nor have they a wish that the payment made by them should extend further than in justice and right it ought; they therefore offer to waive the said release, being satisfied that the payment shall be held and regarded as complainant wishes it, as on account of the said mortgage, to be credited pro tanto, without regard to the settlement, according to such principles as the court may hereinafter direct in the final adjustment of the case.

Respondents knew nothing of the representations alleged to have been made by complainant's agent to him, and are "overwhelmed with surprise" at the iniquitous attempt of complainant to make Blount *their agent*, by holding them accountable, or in any wise responsible, for his misrepresentations and misconduct. Your respondents "protest against this in the most solemn and decided manner."

Respondents admit notice of a disavowal by said complainant of the release aforesaid, but insist that to make it effectual, complainant sh[illegible]

have accompanied it with a return of the entire sum paid his attorney, so as to place the parties in statu quo; that his course exhibits the absurdity of an attempt to disaffirm a solemn contract, with words and pompous phrases, whilst by his more expressive act of holding out the money, he gives his sanction to the essential part of it.

Respondents do not admit, "that all the acts of said attorney are null and void, as having been beyond the authority conferred upon him;" on the contrary, said agent was expressly authorized to receive money on account of, and in part payment of, said mortgage, and the sum paid by them was on account of, and in part payment thereof. Were the release void and without authority, it cannot surely affect the receipt of the money, for which there was direct and express authority.

Respondents further answering say, they are informed that the real cause of objection on the part of said Innerarity, is to be found in a misunderstanding between him and his agent, as to a claim of compensation by the latter, for the collection of $13,000 paid by the defendants, and also for professional services of long standing, and for drafts taken up by the latter for the former; and the said agent, as they are informed, being insolvent or in doubtful circumstances, complainant hopes to repair the loss by the pretext of disavowal of the acts of his agent, so as to throw it on defendants.

That these respondents are indifferent about the bond given by them to complainant for $5,000, which is objected to, and are willing that the same may be cancelled, the subject matter thereof to be deducted by this honorable court.

These respondents concede the effect of the settlement made by the mortgage on the 9th September, 1820, that it is to be considered as conclusive "that the parties concerned cannot well look beyond that well considered and solemn act," and especially do they think it applicable to the claim insisted on by complainant for the damages on a bill of exchange, not embraced or alluded to in said instrument, to *exchange* upon money payable according to said solemn instrument in Pensacola, and to interest which is not provided for nor agreed by the parties to be paid in or by the same. Respondents say that the conclusive effects of said instrument is not at all disputed but established by an acknowledgement of mortgagee in his lifetime, and of his executor and administrator since his death, that a portion of the mortgage was paid, such an admission being entirely consistent with the validity and conclusive effect of that instrument, as would the confession of the owner of a judgment that a credit was due on it not affect its conclusive character.

Respondents do not admit that said Blount represents their interests; this much is certain, he was never in their employment, and they repudiate and reject as wholly false and untrue, and without pretext or colour of right or propriety, the charge of fraudulent combination with him.

And these respondents deny all and all manner of unlawful combination wherewith they are by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained material or necessary for these respondents to make

answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, avoided, or denied, is true to the knowledge or belief of these respondents. All which matters and things these respondents are ready and willing to aver, maintain, and prove, as this honorable court shall direct; and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

THOMAS BALTZELL,
Sol. for respondents.
GEORGE GRISWOLD, and
LEWIS CURTIS.

STATE OF NEW YORK,
City and county of New York, ss.

By this public instrument be it known to all whom it may concern, that I, William H. Maxwell, commissioner in and for the State of New York, and resident in the city of New York, duly commissioned by the Governor of the Territory of Florida, and authorized by law to take the acknowledgment of deeds, letters of attorney, mortgages, contracts, or other writings under seal, with full power and authority to administer oaths and affirmations, and to take depositions, &c., do hereby certify, that on the 16 day of June, 1841, before me, said commissioner, personally came Lewis Curtis and George Griswold, the defendants in the annexed answer named, who being by me duly sworn, did each for himself severally depose and say, that he had read the annexed answer by him subscribed, and knew the contents thereof, that the same was true of his own knowledge, except as to the matters which are therein stated to be on his information and belief, and that as to those matters he believes it to be true.

In testimony whereof I have hereunto set my hand and seal the day and year above written.

WM. H. MAXWELL,
Florida Commissioner.

Amended bill.

JOHN INNERARITY, administrator of John Forbes, deceased,
vs.
JOHN CARNOCHAN, Peter Mitchel, Joseph M. White, Louis McLane, Charles A. Davis, Lewis Curtis & George Griswold. } In chancery.

To the honorable Dillon Jordan, judge of the district of West Florida, sitting in chancery for the county of Escambia.

Humbly complaining unto your honor, your orator, John Innerarity, administrator of John Forbes, deceased, of the city of Pensacola, sheweth, that on the 19th day of August, 1839, the said John Innerarity filed his bill of foreclosure, together with one James Innerarity, in this hono-

rable court, against Louis McLane, Charles Augustus Davis, Joseph M. White, as trustees of the Apalachicola Land Company, and also against Lewis Curtis and George Griswold, thereby stating such several matters and things as in the said original bill of complaint are for that purpose more particularly mentioned and set forth, and praying for the foreclosure of a mortgage therein also set forth; and also on the 12th June, 1840, his cross bill against the said parties and others, stating such other several matters and things as in said cross bill are more particularly mentioned, and praying, among other things more particularly set forth in said cross bill, for the cancellation of a certain release, given by one Thomas M. Blount, assuming to act as the attorney of your orator, to the said trustees of the said Apalachicola Land Company, the said cross bill being exhibited by your orator as a cross bill to an original bill of complaint against him and others, filed in this honorable court by John Carnochan, Peter Mitchel, Louis McLane, Charles Augustus Davis, and Joseph M. White, on the 29th day of November, 1837.

Your orator further shows, that on the 18th day of May, 1841, the said complainants by their attorney came into this honorable court, and said that they will no further prosecute their said bill, the bill filed by defendants in the same court against Carnochan and others for the same object being adequate for the same purpose. They therefore ask that the same may be dismissed." Signed 'Thomas Baltzel, for complainants. And the leave thus asked for was granted on the 27th day of May, 1841, and at the same time your orator was permitted by this court so to amend his bill and cross bill as to bring all the matters in controversy between the parties to a fair and equitable hearing; and the whole case was set for a final hearing on the last Monday in September, 1841.

Your orator therefore (the leave of the court being had so to amend his bill as to bring all the matters in controversy before the court) prays, that his answer to the original bill of John Carnochan and others, filed by your orator on the 13th day of December, 1838, and his cross bill, filed on the 12th day of June, 1840, as well as his said bill of foreclosure, be here taken as a part of this his amended bill, and the facts and statements therein set forth be received as reiterated and reaffirmed by your [orator,] and the prayers therein made be received as the prayer of your orator, in this his amended bill, as fully and as particularly as if the same were set forth herein particularly and at large; and in addition thereto, and explanation thereof, your orator shows, that the lands mentioned in said bill of foreclosure, as having been mortgaged by Octavius Mitchel to John Forbes, are the same which were known by the name of Forbes' purchase, lying between the Saint Mark's and Apalachicola rivers; and if this honorable court should find any obscurity or uncertainty in the various descriptions thereof now on file in this case, he prays reference may be had to the original conveyance of the same lands to Octavius Mitchel by John Innerarity, bearing date 1 September, 1820, and on record in the office of the public archives in the city of Pensacola.

Your orator further shews, that he has understood and believes, that Lewis Curtis and George Griswold are now the sole representatives as

trustees of the interest of all who claim under the above mentioned conveyance to Colin Mitchel; and he prays that the several parties defendant to this suit may be required to answer on their oaths, and shew if it be so; and if it be so, that they be made defendants hereto in their representative character.

Your orator further prays, that Thomas M. Blount and the president and directors of the Bank of Pensacola, be made parties defendant to this bill, and be required to answer the several matters set forth in the bill aforesaid, as if particularly interrogated thereupon, and particularly as to the instructions given to the said Catlin by the said Blount, in reference to paying over the money deposited by said Blount with said Catlin, to be paid over to your orator on certain conditions, and that writs of subpœna be issued to said parties defendant, requiring them to appear and answer hereto.

Your orator further charges, that he is entitled, according to the laws of Spain, to the decima, or ten per cent. on the amount due on the mortgage aforesaid, from the time that the parties to the mortgage failed to pay the amount secured by the same. That he is justly entitled to twenty per cent. damages on the protested bill of exchange. That he is entitled to the exchange due upon all the payments on the mortgage, and to interest at the rate of eight per cent. per annum from the respective periods at which the several sums became due.

But now, so it is, may it please your honor, that the said Lewis Curtis, George Griswold, Thomas M. Blount, and the president and directors of the Bank of Pensacola, confederating with divers other persons to your orator unknown, who, when discovered, he prays may be made defendants hereto, and contriving how to injure and oppress your orator in the premises, pretend that the aforesaid charges are not true, and that nothing is due to your orator on the mortgage aforesaid; whereas your orator charges the contrary thereof to be true. All which doings and pretences are contrary to equity and good conscience, and tend to the manifest injury of your orator in the premises. In tender consideration, &c.

And your orator prays that certain papers herewith filed and marked (P. 2) may be taken and received as a part of his bill to establish the several facts heretofore averred and set forth.

And your orator prays, that the parties hereto defendant may be required to answer and come to a full account with your orator, and pay him the balance justly due to him, or else be forever barred from the equity of redemption in the lands aforesaid.

And may it please your honor to grant writs of subpœna, &c. And your orator will ever pray, &c.

WALKER ANDERSON,
Sol'r for compl't.

Filed 6 Sept., 1841.

To the honorable Dillon Jordan, judge of the superior court for the county of Escambia, sitting in chancery:

The answer of George Griswold and Lewis Curtis, trustees of the Apalachicola Land Company, to the amended bill filed in this honorable court by John Innerarity:

These respondents, saving, &c., as in their original answer, for further answer say, that they are the representatives of the interest of all who claim under the conveyance to Colin Mitchel. These respondents do not admit, but protest against their liability on said pretended bill of exchange, insisting that the remedy of the parties, if any therein, is at law, and is not, and cannot be united or connected with the remedy for the foreclosure of the mortgage, so as to give the party the united advantages of two remedies—that they do not admit the existence of such bill, its protest, or notice, &c.; and if given, &c., they do not admit its obligation upon defendants, insisting that they are purchasers, without notice, farther than is contained in the mortgage. Respondents, therefore, protest against the new claim for ten per cent.—against the claim for damages, exchange, and every thing connected with said bill of exchange; they insist, also, that the party complainant is not entitled to interest; or if entitled, only under circumstances, and in the manner stated in their answer; that, in consequence of the adverse decision by the commissioners in West Florida, and by the superior court of West Florida, who declared the title fraudulent, which decision was only reversed by the Supreme Court in 1835, the assignees of respondents were prevented from making sale of the land, and subjected to bearing vexatious and onerous expenses in paying lawyers, witnesses, and officers, and obtaining documents from Havana, Madrid, New Orleans, Mobile, and St. Augustine; that after the decision of the Supreme Court of the United States, to wit, in the Indian war commenced, and has continued to the present time, the larger portion of the land in said purchase being in possession of the hostile Indians, and all settlement on the land and emigration from abroad prevented thereby, and most of those settled upon the land driven off.

Respondents, further answering, say, that the superior court of West Florida decided against the right of said Forbes and his assignees to Fort St. Marks, and the country adjacent, to the extent of fifteen hundred yards, which decision was confirmed by the Supreme Court of the United States at their term of 1841, as by reference to the proceedings and record thereof will fully appear, and which are prayed to be taken as part hereof. That said and said land appurtenant were conveyed in the transfer of the land aforesaid by John Forbes, and formed part of the consideration money, for which the mortgage now sought to be foreclosed was given; that the same was valuable, and formed a large portion of the consideration in the sale aforesaid, and that they ought to be allowed a deduction from said mortgage of a large sum on account thereof, to wit, of the sum of fifty thousand dollars; that they ought to be allowed also for expenses in maintaining the title, which they allege to have amounted to one hundred thousand dollars.

These respondents further answering say, that they know nothing of instructions given by Blount to Catlin, and deny that the payment made to Blount was connected with other conditions than the writings themselves designate; that these are the terms, and no other, upon which [they] contracted, and they protest against being held responsible for any perfidy or misconduct of his; that he was not their agent, but complainants', and if they bargained with him, it was on the faith of his being complainants' solicitor and agent, and not because respondents knew him, or had any confidence whatever in him.

And these respondents having fully answered, &c.

THOMAS BALTZELL,
Sol'r for complainants.

It is agreed that this answer be received and filed without oath.

W. ANDERSON,
Solicitor for complainants.

Filed, 12 Oct., 1841.

INNERARITY, administrator, &c., vs. Trustees of APALACHICOLA LAND Co. } Replication.

And the said plaintiff, not admitting the several matters set forth in said answer of the said defendants, but protesting against the same, for replication thereto saith, that he will maintain all the allegations set forth in his said bill, and prays as in his said bill herein before set forth.

ANDERSON,
Solicitor for plaintiff.

Filed, 11 Oct., 1841.

INNERARITY, administrator, &c., vs. Trustees of APALACHICOLA LAND Co. } Amended bill—replication.

The complainant, for replication, says, that protesting there is any matter contained in the answer of respondent sufficient to defeat his said claim, he will maintain his said bill and its allegations.

ANDERSON,
Solicitor for complainant.

Filed, 12 Oct., 1841.

To the honorable the judges of the superior court for the county of Escambia, in the Territory of Florida, sitting in chancery.

Humbly complaining shew to your honor, your orators, Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company, would show to your honor that John Innerarity, as administrator of John Forbes, instituted his suit in chancery in the superior court for said county, to obtain foreclosure of a mortgage given by Octavius Mitchel to the said John Forbes, about the day of September, 1820, to secure the payment of twenty-five thousand dollars, being part of the purchase money on a tract of land lying in Florida, known as Forbes' purchase, and praying, among other things, the sale of the said property in satisfaction thereof; to which said bill these complainants have filed their answer, and other proceedings in reference thereto have been had, as by

reference to the record and proceedings thereof will fully appear, and which are prayed to be made a part hereof. Your orators would state that they are assignees of said mortgage, and owners of said property, with all the rights and privileges of the original purchasers from said John Forbes.

They would further show to your honor, that in the sale made of the tract of land aforesaid, known as Forbes' purchase, there was no reservation of the tract of land around Fort Saint Mark's, and of the tract of land embracing the same fort, but the same were transferred and conveyed with the other land sold them and their assignees in the purchase aforesaid, and formed part of the consideration money claimed as aforesaid from them. And your orators further shew, that said fort, and the tract of land near to it to the distance of two thousand yards, were, at the time of the sale made by John Forbes, of great value, and are now, and have been for a long time past, of great value. Your orators charge that the said land was, and is, worth the sum of one hundred thousand dollars, and the said tract was wrongfully represented by said Forbes to belong to him, and sold as such.

Your orators further show, that their suit for confirmation of their title to said tract of land, in the name of Colin Mitchel, &c., vs. the United States, was decided adversely to them; and it was, at the term of the superior court in Leon county, and afterwards by the Supreme Court of the United States, held and determined that the said land, to the extent of fifteen hundred yards, or did rightfully belong to the United States, and was not the property of the said Forbes or those claiming under him; and they pray these proceedings to be taken as a part of this bill. Wherefore these complainants say, they have a right and a claim for the loss of said land, and pray that its value be deducted from the purchase money due on said mortgage, and that for the deficiency they may have a decree against the administrator of said Forbes. Now, although application has been made to said John Innerarity, administrator as aforesaid, for a deduction on said mortgage, yet he has refused, alleging various pretexts.

In tender consideration whereof, and inasmuch as your orators are remediless in the premises by the rules of the law, and only relievable in this honorable court, where matters of this kind are properly cognizable; to the end, therefore, that the said administrator be made a party hereto, and on his corporal oath full, true, and perfect answer make thereto, as if he were fully interrogated; that this bill be considered in the nature of a cross bill to the original bill of complaint of Innerarity herein; that this honorable court may decree an abatement of the price of said mortgage, in proportion to the value of said fort and the land adjacent, and give a decree for the remainder; and give such other and further relief as their case may require. That your honor will grant, &c.

THOMAS BALTZELL,
Sol. for compl't.

Filed, 12 October, 1841.

The answer of John Innerarity, administrator of John Forbes, de-

ceased, to the cross bill of Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company, filed in the superior court of the county of Escambia, in the Territory of Florida, on the 12th October, 1841.

The defendant, reserving the right of excepting at all times to the manifest errors and imperfections of the said bill, in answer to so much thereof as he is advised is material, saith, that the suit instituted by him against the said trustees, was for the foreclosure of a mortgage to pay a certain sum of money due to his intestate, and that his claim is founded on an instrument of writing now on file in this court, which gives to his intestate an unconditional claim to the amount therein acknowledged to be due; that this defendant is not bound to look beyond that instrument, and cannot be held responsible for any pretended claims against the said John Forbes, growing out of supposed obligations of which no evidence is offered.

This defendant further saith, that John Forbes, to whom the said mortgage was given, at no time warranted the title to the lands in question, nor was the title to said lands warranted by any persons through whom the complainants can derive any right or claim upon this respondent; and in their bill aforesaid no pretence is made by said complainants of the existence of a warranty by any person whatsoever, so that the pretence is wholly unfounded that they are entitled to any deduction whatever on account of the alleged failure of title to a portion of the lands in question.

This defendant further saith, that he is advised that he is in no wise bound to repair any loss which the said complainants may have sustained by a failure of title; yet that, even if he was bound, it would only be to the extent of the proportion, which the portion set forth in said cross bill as having been defective, as to title, bears to the whole purchase, the said proportion being about the thousandth part of the whole. And he therefore saith, that if this honorable court should deem him in any wise (in the absence of all covenants whatever,) answerable to said complainant, it would only be for a deduction pro tanto from the original purchase money.

And this defendant, &c. JOHN INNERARITY.
By his solicitor, W. ANDERSON.

It is agreed that this answer be received and filed without oath.
THOMAS BALTZELL,
Filed 12 October, 1841. *Sol. for compl'ts.*

Trustees of Apa. Land Co. }
vs. }
INNERARITY, adm'r of Forbes. }

Cross bill claiming pay for Fort St. Mark's.

The complainants for replication say, protesting that there is any matter or thing contained in the answer of respondent, sufficient to defeat their said claim, for replication say, that they will maintain their said bill and its allegations. THOMAS BALTZELL,
Filed 12 October, 1841. *Sol. for compl'ts.*

TERRITORY OF FLORIDA, *Escambia county, to wit:*

Thomas Baltzell, the agent and attorney of the trustees of the Apalachicola Land Company, would state, that he was employed in Pensacola, in May last, to attend to their case with John Innerarity, when his attention was first seriously drawn to the subject. That the agent of the company, Mr. Carnochan, also arrived at Pensacola shortly afterwards. That deponent expected to have availed himself of the superior knowledge and intimate acquaintance with the facts possessed by that individual, but unfortunately he was, on his route, seized with an illness which proved fatal. Deponent was compelled to rely upon a view of the subject, hastily taken from the papers, in the midst of the hurried engagements of court, and the harrassing and painful attentions due to a sick friend. That he now discovers that an important error was committed by him, in not insisting, in the answer which was prepared by him and forwarded for the signature of the trustees at New York, in the overpayment of £1500 or £1125, which was directed to be repaid by Mr. Forbes to the parties through Mr. Potts in London. That the trustees themselves had no papers or documents with which to correct this mistake, the same being in possession of said agent, or of deponent, and it is probable their attention was not drawn to it.

THOMAS BALTZELL.

Sworn to and subscribed before me, this 12th day of October, 1841.

W. W. J. KELLY, *Clk.*

Filed 12 Oct. 1841.

JOHN INNERARITY, adm'r, &c.
vs.
The Trustees of the Apalachicola Land Co. and others. } In chancery,

In this case it is agreed between the parties, that, in the event of an appeal from the decree of the chancellor, in the superior court of Escambia county, and it be desirable to either party, testimony may be taken hereafter as to the amount of the expenses, in the prosecution of the claim of the said Apalachicola Company, and Octavius Mitchel, to the lands in controversy, known as Forbes' purchase, in the Supreme Court of the United States, and the superior courts in Florida. And also as to the facts in relation to the sale of lands, in the said purchase, by the said company, previous to the decision of the supreme court, or whether such sales could be effected.

W. ANDERSON,
Att'y for complainant.
V. BUTLER, *for def'ts.*

Apalachicola Land Co.
vs.
JOHN INNERARITY.

In this case it is agreed that the final decree be made in vacation, as

of this term, and either party shall have the right to appeal without giving bond or notice of appeal.

BENJAMIN D. WRIGHT,
For compl'ts.
W. ANDERSON, *for def't.*

Agreement in relation to the taking of depositions in the cases of John Innerarity, adm'r of John Forbes, with the trustees of the Apalachicola Land Company, depending in the superior court for Escambia county, Florida, in chancery.

It is agreed that depositions may be taken in these cases, according to the rules and regulations prescribed by statute, in cases depending at common law, and to be received with like effect, as if taken under the act regulating proceedings in chancery.

October 13, 1841.

T. BALTZELL,
for Apa. Land Co.
W. ANDERSON,
Sol'r for J. Innerarity.

Filed 13 Oct. 1841.

Escambia superior court.—In chancery.

INNERARITY, adm'r, &c. vs. Trustees of Apa. Land Co. } To foreclose mortgage.

Same vs. Same, &c. } To annul a receipt given by Blount for $13,000.

Trustees of Apa. Land Co. vs. INNERARITY, adm'r. } Cross bill.

It is agreed between the parties, that these cases be consolidated and tried together, at the November term, and that the parties may take testimony, at any time, by the first day of January next; said testimony to be used before the court of appeals, if taken after the decree, with as full effect as before, and the parties agree, in case of appeal, to waive an appeal bond and notice.

THOMAS BALTZELL,
Sol'r for trustees.
W. ANDERSON,
Sol'r for Innerarity.

Filed 11 October, 1841.

Exhibits—A.

ISLAND OF CUBA:

Be it known by this memorandum, made duplicate, between Mr. John Forbes, executor of the late William Panton, and Thomas Forbes, on the one part, acting in behalf of the heirs of said deceased, and Colin Mitchel, agent for and acting in behalf of Mess. Carnochan and Mitchel,

merchants, Savannah, on the other part. That the said John Forbes hereby agrees and bargains to sell unto the said Colin Mitchell, two undivided thirds of a certain tract of land ceded by the Creek Indians unto the house of trade of which said Forbes was a principal partner, lying and situate upon and between the rivers Apalachicola and Apalachy, or Wakulla, as more plainly appears by the map or plan thereof, now in the possession of said Colin Mitchel, saving and excepting, always, the following, the reserves which are not included in the sale, viz:

1. Fifteen thousand acres, laid off and surveyed in four tracts, in the names of P. L. Trouvillet, Marcos de Villiers, A. Guillemand, and Chev'r de Villiers.

2. An island named Forbes' Island, situated on the river Apalachicola, about thirty-five miles from its mouth, following the of the river.

3. Six hundred and forty acres given to the interpreter, William Hambly, for services.

4. Six hundred and forty acres made over to Edward Doyle, secretary at the time of session.

And 5. About four hundred acres made over to George McPherson, one of the chain carriers: saving and excepting the above sixteen thousand six hundred and eighty acres, and the said island called Forbes', the said John Forbes will make over unto the said Colin Mitchel, the aforesaid two undivided thirds of said land, for and in consideration of the sum of sixty-six thousand six hundred and sixty-six dollars and two-thirds of a dollar, to be paid in the manner following, viz: One quarter, or sixteen thousand six hundred and sixty-six dollars, on the 1st May next, in the city of London, valuing the same at four shillings and sixpence sterling each dollar; the remainder, or fifty thousand dollars, in four equal yearly instalments, reckoning from this date. And whereas, it is not possible to make out proper titles, until the plans and original surveys shall come to hand from West Florida, the present minute is made for the purpose of ratifying the bargain, for the sure fulfilment whereof the above parties have hereunto interchangeably set their hands and seals, viz:

John Forbes, in the city of Matanzas, on the fourth day of December, one thousand eight hundred and seventeen, and Colin Mitchel, in the city of Havanna, on the eighth day of the same month and year.

(Signed) COLIN MITCHEL, [SEAL.]
" JOHN FORBES. [SEAL.]

E pluribus unum. Consulate of the United States of America, Matanzas.

I, Lewis Shoemaker, consul of the United States of America at this port, and residing within the same, do certify that I have carefully collated and compared the annexed copy with the original agreement, and do find the same to be a true and faithful copy thereof.

[SEAL.] Witness my hand and seal of office, this 3rd day of July, 1835.

(Signed) LEWIS SHOEMAKER.

C.

NEW PROVIDENCE.

I, the honorable Thomas Forbes, do declare this to be my last will and testament: After the payment of my just debts, I give, devise, and bequeath all my property, real and personal, in the Bahama islands, in West Florida, and elsewhere, unto my children, William Henry, John Gordan, and Mary Sophia Forbes, and to their heirs and assigns forever, equally to be divided between them, share and share alike. I nominate and appoint my brother, John Forbes, and my above mentioned two sons, executors of this my last will and testament, dated second day of February, 1808.

THOMAS FORBES. [SEAL.]

Sealed and delivered in presence of us—
REEVES FOWLER,
JOHN A. BODE,
GEO. H. RAMSAY.

I further direct and desire, that it may be considered a part of this my will, that the several young gentlemen, now employed as clerks by me, may be paid one year's salary as a mark of my friendship for them; and that my servants, Harry, Cuffy, and Harry's wife, may be confirmed in their freedom, and also in their title to the little property held by them.

T. F.

Present—REEVES FOWLER,
JOHN A. BODE,
GEO. H. RAMSAY.

BAHAMA ISLANDS, *New Providence:*

To all to whom these presents shall come: Know ye, that upon this eighteenth day of April, in the year of our Lord one thousand eight hundred and eight, 1808, before me, Charles Cameron, esquire, captain general and governor in chief in and over the said islands, chancellor, vice admiral, and ordinary of the same, personally came and applied John A. Bode, of the island of New Providence, gentleman, who, being solemnly sworn on the holy evangelists of Almighty God, maketh oath that he was present, and did see the before named Thomas Forbes sign and seal the within will, and heard him publish and declare the same as and for his last will and testament. That when the testator so did he was of sound and disposing mind, memory, and understanding, according to the best of deponent's knowledge and discernment; and the deponent further saith, that he, together with Reeves Fowler, and George H. Ramsay, in presence of said testator, and in the presence of each other, subscribed their names as witnesses to the due execution of the said foregoing will.

Sworn to before me—

CHARLES CAMERON.

BAHAMA ISLANDS, *Register's Office:*

I do certify, that the foregoing is a true copy from the original will deposited in this office, and recorded in book A—3, pages 66 and 67.

JOHN McCARTNEY,

16 Dec., 1811. *Dep'y Register.*

Certifico, que la copia del documentes, que antecede lo es fiel y conforme de su original que el efecto me fue entregardo y para que conste pingo el presente en Matanzas, Abril 20, 1824.

MARTIN FOLCH.

E pluribus Unum. Consulate of the United States of America, Matanzas.

I, Lewis Shoemaker, consul of the United States of America at this port, and residing within the same, do certify, that the annexed is a true copy of an instrument purporting to be the last will and testament of Thomas Forbes, of New Providence, deceased.

[SEAL.] Witness my hand and seal of office, this 2d day of April, 1836.

LEWIS SHOEMAKER.

TERRITORY OF FLORIDA, *Escambia county:*

I, M. Crupper, clerk of the court of the county aforesaid, do hereby [certify] that letters of administration, on the estate of John Forbes, deceased, were granted to John Innerarity on the 6th day of January last, he having given security for the said trust according to law; and that the said John Innerarity is, accordingly, the duly qualified administrator on the said estate.

In testimony whereof, I have hereunto set my hand and affixed the [SEAL.] seal of the said court, at Pensacola, in the Territory of Florida, and county of Escambia, this thirtieth day of September, one thousand eight hundred and thirty-six.

M. CRUPPER, *Clerk.*

TERRITORY OF FLORIDA, *Escambia county, ss:*

I, Charles Evans, judge of the county court of Escambia, in the Territory of Florida, do hereby certify, that M. Crupper, whose name is subscribed above, is clerk of the county court of Escambia county, in the said Territory, and that full faith and credit is due and given to his official acts as such.

Given under my hand, in the city of Pensacola, in said Territory, this 13th day of September, 1836.

C. EVANS, *Judge C. C. E. C.*

Filed 14 May, 1841.

Letter of Edmund De Pestre.—Copy.

MOBILE, 6 *December*, 1836.

JOHN INNERARITY, esq., *Pensacola.*

SIR: Having understood that you had petitioned for and obtained letters of administration upon the estate of John Forbes, deceased, for the purpose of foreclosing a mortgage at Pensacola, by the purchasers of

the Apa. lands, for the purpose of securing to him (as executor of William Panton and Thomas Forbes) the last instalment due by the purchasers of said lands, amounting together to the sum of £5,625 sterling, I take upon myself the liberty of addressing you upon the subject, as being directly interested in the estate of John Forbes, in right of my wife Juana Forbes, to part of the moneys which have been secured by the above mentioned mortgage, and which I understand you are about foreclosing, as also to make such a statement from the papers and books of Mr. Forbes, concerning the sale of those lands, as may be useful to you at the present time.

I will briefly state, that the two-thirds part of the Apalachicola lands, ⅔ belonging to the estate of William Panton, and ⅓ to that of Thomas Forbes, was sold by John Forbes, as executor of those two estates, to a company of gentlemen, who were represented by Mr. Colin Mitchel, of Havanna, for the sum of sixty-six thousand six hundred and sixty-six dollars and sixty-six cents and two-thirds, say $66,666 66⅔, which sum was to be paid in the city of London, at the stipulated rate of four shillings and six pence the dollar, the whole therefore amounted to £15,000 sterling; one-fourth of this sum, equal to £3,750 sterling, was to be paid on first of May, 1818, and the balance in four equal annual instalments of £2,812 10*s.* sterling each, one payable respectively on the 8th December, 1818, '19, '20, and '21; the three first payments, making together the sum of £9,375 sterling, were from accounts duly paid; but it appears evident, that the two last instalments of £2,812 10*s.* sterling each, were not paid; for the one due in December, 1820, a bill was drawn by Colin Mitchel upon one William Mitchel, which bill was protested, and returned with damages 15 p. c.

Admitting the correctness of the above statement, the claim against the land company would appear as follows:

The Apalachicola Land Co. to John Forbes, executor of Panton and T. Forbes.

1820.		
Dec'r 8	To penultimate instalment, due this day -	£2,812 10 0
	To damages upon protested bill, 15 p. c. -	421 17 6
	expenses for noting and protesting -	3 03 6
1821.		
Dec'r 8	last instalment due this date - -	2,812 10 0
1836.		
Dec'r 8	interest upon protested bill from 8 Dec., 1820, to .	
	interest upon last instalment from 8 Dec., 1821, to .	

From the above, a deduction is to be made, as near as I can ascertain, of £375, with its proportion of damages and interest, to the following effect: It is made apparent, by the correspondence of Mr. Forbes, that some time in 1819, Messrs. James and John Innerarity no longer chosed

to sell, but preferred retaining their interest in the land, amounting to ⅓ of the one-third appertaining to the representatives of William Panton, which third had been sold for £7,500, of which the one-fifth amounted to £1,500, which of course were to be returned to the purchasers; a letter of John Forbes to James S. Potts, dated 8 December, 1819, orders Potts to pay back to Carnochan £375 out of each of the three payments already made, making the sum of £1,125 sterling, equal to $5,000, which Mr. Peter Mitchel acknowledged to have been paid back, (in an account of which I shall have occasion to speak of hereafter.) Now, having paid £1,125 from 1,500, the balance surely cannot be more than £375, to which, as I have already said, are to be added a proportion of damages and interest. Yourself and brother being the principal actors in this transaction, would certainly be well able to explain it. I will be as brief as possible upon Mr. Peter Mitchel's account, made in the name of Carnochan and Mitchel. In the first place, he credits the representatives of John Forbes for the amount of the two last instalments, for which the land was mortgaged, say $25,000. He then sets forth on the debtor side the pretended payment, by Colin Mitchel, (without stating date, or explaining when or how,) of the protested bill, along with its damages, &c., say $12,500. He then charges an over purchase of land (being yours and your brother's interest) to the amount of $10,000, in lieu of £1,500 sterling; he acknowledges having been paid back $5,000; and then, without considering that it was not returnable before it was first paid, he brings in a tremendous charge of interest and damages, upon the pretended remaining $5,000.

I can discover nothing in Mr. Forbes' papers but what goes to prove that he never fingered one penny proceeding from the two last instalments upon the Apa. lands. If the purchasers have at any time paid sums of money to any of the individuals who are ultimately to receive the proceeds of the lands, the receipts, as far as the interest of the individual goes, will be available at the settlement; but it is out of all order to be charging the representatives of John Forbes with sums of money which they or the testator know nothing of. You will, therefore, in your settlement, I hope, admit of no set-off, but such as are accompanied by proper vouchers.

When you will have received payment of the balance due by the purchasers of the Apa. lands, and before dividing the proceeds between the different claimants, you will please deduct from said balance the claim which the representatives of the late John Forbes make to the commissions and charges, to which he, John Forbes, was entitled for making the sale, as follows:

Commissions, at 5 p. c., upon gross amount of the sale of lands, £13,500 - - - - -	£675 00 0
Potts' commissions for receiving and paying the three first payments, £9,375, *a* 17 - - - -	93 15 0
Expenses upon sale - - - - -	20 05 0
	£789 00 0

Interest upon £789, from 8 Dec., 1821, to .

As shewn in the above statement, the claim of the representatives of John Forbes, upon the purchase money of the Apala. lands, amounts to ; and as it was to be paid in London, with [the] bulk of the purchase money, it is entitled to all the advantages of such payment, and if it should be paid here, you will observe to take into consideration the rate of exchange at the time being.

The commission of Pott appears in the account of John Forbes, because each individual interested received the full amount of the proportion he was entitled to from each of the payments made, and Pott's per ct. was brought in account against John Forbes, who repeatedly expressed himself willing to defer the reimbursement of his expenses and commission to the last instalment, with the hope that such disinterestedness on his part would be gratefully appreciated by all interested.

I hope, sir, the importance of the intended settlement will be a sufficient excuse for this long letter. I hope that it may be useful to you, and if any particular point should require further explanation, you will find me willing to do all in my power to reduce within as small a compass as possible the complicated concerns in which so many are interested. In the mean time I remain, very respectfully,

Y'r mo. ob't serv't,

Sd. EDMUND DEPESTRE,

For himself and as agent of Francis Dalcour, executor of John Forbes.

This is admitted as a true copy of the original letter.

ANDERSON, *for pl'ff.*

Filed, Oct. 11, 1841.

D. JORDAN, *Judge.*

PENSACOLA, 15*th January*, 1837.

JOHN CARNOCHAN, esq.,

Rocky Comfort, Florida.

My dear sir: In my last respects of the 8 inst., I omitted to *avert* to the $5,000 referred to in your favor of 21 ult. In relation thereto I flatter myself that I can easily convince you that this matter is altogether extraneous to the mortgage in question, which, as you know, was given to secure the balance due on the purchase, whereas C. M.'s claim of offsets rests altogether on other grounds, for which the parties in interest on the said mortgage have no liability, being altogether for another object, with which they had not the remotest identity or connexion. To the orthoxody of all this, the mortgagor C. M. lent his ready assent, founded on his positive knowledge of the facts, in confirmation of which I again refer you to his declaratory acknowledgment. On the 6 ult., Mr. Edmund Depestre addressed to me a letter in my capacity of administrator, in which he spontaneusly furnished me with all the lights he could collect in relation to these matters; the enclosed extracts from his letter are in confirmation of all that I have stated.

As stated in Mr. C. M.'s declaratory acknowledgment, the amount

due on the mortgage given by him, adjusted to the 30 Sept. last, was - - - - - - - - - $57,790 18
Against this amount, I admit as an offsett, James Innerarity's receipt for the sums paid him, adjusted with interest to said date, viz: 30 September last - - 8,967 77

$48,820 41

To this amount is to be added the interest at 7 per cent. up to the time of payment. With regard to the amount said to have been paid to Mr. Wm. H. Forbes on account of the moiety of the protested bill, I repeat what I stated in my last respects, that I await his receipt in form duly authenticated, and with the consular legalization, my only object being to protect myself against all responsibility. Although it be a matter between the estate of J. F. individually and C. M., with which, in my capacity of administrator as trustee for the parties in interest, I have nothing to do; yet upon examination you will see that what Mr. Depestre states in relation to the sum of £395 principal, and the corresponding interest, being all that can be claimed as returnable by the estate of J. F. is correct; and I am willing, rather than that the payment and cancellation of the mortgage should be delayed for a moment, upon your addressing me a letter to the effect, to retain said amount for your account, or that of the mortgager, out of that claimed by Mr. Depestre for J. F.'s commissions, &c., is that the dividing line being for such a small sum, is as a feather compared with the important object of the removal of this heavy incumbrance.

The whole being thus placed on its proper basis, it appears to me that there can be no intervening obstacles to the payment and cancellation of the mortgage.

I ever am, with sincere regard, my dear sir,
Yours, most truly,
JOHN INNERARITY.

17th. The preceding was too late for the mail, I have just received your esteemed favor of 28 ult., post marked "30th," in reply to which I have barely time to remark that my anterior and foregoing respects will furnish you with all the explanation required, which I flatter myself will be satisfactory. My legal advisers are of the most respectable character. They say that all or any offsets must be of the same identity as the mortgage, or, in other words, no connexion of other interests therewith. Between your good self and me individually, there will ever, I trust, be the utmost harmony.

Yours, respectfully,
I shall again do myself this pleasure. J. I.
Filed, Oct. 11, 1841. D. J., *Judge*.

K.

PENSACOLA, 20 *Jan'y*, 1840.

Mess. George Griswold and Lewis Curtis,
Trustees of the Apalachicola Land Company, New York.

Gentlemen: So soon after his return as I saw Mr. Blount, he inform-

ed me of the provisional arrangement, that he had made with you, subject to my approval; but this involved the suspension of the sum of $5,000, with the corresponding interest, &c., for which your contingent bond was proposed, with the preliminary, however, of the cancellation of the moiety of the mortgage. This proposition, I confess, startled me in limine, and the more I reflected, the more my duty as administrator caused me to shrink from the assumption of such a responsibility —a responsibility that must undermine the very foundation of my trust, by changing the nature of the lien upon which it was based. Under these circumstances, as the November term of our court was so near at hand, I intimated to Mr. Blount my wish either to have its action on the whole case, or to take an interlocutory order for such sum as he was authorized by you to pay me on my simultaneously endorsing a receipt on the original mortgage on account, and in part payment thereof. In adhering to your instructions, and in requiring my compliance with the preliminary afore referred to, the casus fœderis was left with him; he was, therefore, placed in the position of your agent.

In consequence of the absence of the judge, no court was held, but he had sent an order to the marshal to adjourn it to an extra term, 25 Nov'r, when, after disposing of the civil and criminal dockets, the court rose. Most of the chancery cases had, therefore, to remain in statu quo until next term. Mr. Blount informed me that the judge consecutively took the papers with him to his chambers, where, of course, they would remain in abeyance of his decision. This, however, appeared to me of very uncertain duration, and as I was intensely desirous of leaving nothing on my side undone in making all possible approximation towards a settlement, I had some subsequent conversation with Mr. Blount, which resulted in his proposal to accompany me to Mobile in order that we might have a joint conference with my brother on the subject. To this I most cordially consented. The conference accordingly took place, and was extended to a second interview. My brother most fully and emphatically coincided in my previously expressed opinion. He said that I was the only legal organ of settlement, and that no consideration whatever ought to induce me to change, alter, or vary the nature of the security, which constituted the very essence of my trust. That his and my answers to the bill of your predecessors placed the whole matter in the most luminous point of view to the plainest perception. So much so, that he felt convinced that had you seen them, there would have been no question of any reservation whatever; that in relation to the proposed provisional settlement, my offer to indorse my receipt on the original mortgage was certainly all that could fairly or legitimately be required, and that any thing further would plunge me into an abyss of responsibility to which it could never be your intention to expose me—the cancellation of the mortgage being your object, and the recovery of what was due mine, the one being consequent on the other.

Thus, gentlemen, though not honored with any communication from you, I have thought it my duty to make this exposé, in order that my

motives may be fully understood and appreciated. Influenced by the same desire by which I have been invariably animated, I now renew to you my offer of amicable adjustment, either in whole or in part, upon the basis which I have stated. Never was there a case that reposed on plainer or simpler principles, and how it could have been protracted for such a series of years, notwithstanding my continually renewed efforts to obtain a settlement, is a mystery seemingly beyond solution. Under your auspices, however, and through your efficacy, I trust that the whole will now be brought to an immediate and final issue; and in this hope I have the honor to be, with great consideration,

Gentlemen,

Yr. most obedient and humble serv't,

JOHN INNERARITY.

To Lewis Curtis and George Griswold, esq'rs,

Trustees of the Apalachicola Land Company.

Gentlemen: I addressed you a letter on the 20 January last, and subsequently on the 25 February, by original and duplicate, in which I advised you that having learned from T. M. Blount, esq., that he had made an arrangement with you, subject to my approval, as he stated to me and others, in relation to the discharge of one moiety of the mortgage for the sum of twenty-five thousand dollars, principal, bearing date 9 September, 1820, I did not feel at liberty, as the representative of the interests of others, for the reasons stated in my said letter of the 20 January, to sanction the provisional contract which he had made

To these letters I have received no answer, but to my great astonishment I have just seen the deed of release given to you on the 19 September last by Mr. Blount, in which he proposes to act as my attorney, and which deed professes to discharge the trustees from one moiety secured by the abovementioned mortgage.

In so doing, Mr. Blount has transcended his authority as my attorney, as will appear by reference to my letter of attorney bearing date 16 August last, and of which, as I have only this morning seen, you have had copies recorded in the counties of Escambia, Leon, and Gadsden, in this territory. My own power, as administrator, does not extend to the relinquishment of any part of the debt so secured by mortgage, nor to alter the nature of that security. Consequently, I could not delegate to another a greater power than that which was vested in me. A reference to my said letter of attorney will show that Mr. Blount was empowered to give a release for whatever amount of money he might receive from you *pro tanto* and nothing more; whereas, it appears from his deed of release, that on receiving a sum of money, greatly less than one half of what was due, he professes to give a release of one moiety of the mortgage.

Feeling it to be my duty to disavow this unauthorized assumption of my attorney, and not less my duty to give you timely warning to protect yourselves from injury, I hereby notify you that I disavow and repudiate the deed of release, bearing date 19 September last, and do most

formally and solemnly protest against the said instrument, which professes to be the act of my attorney, and that I shall not consider myself bound, either in law or equity, by its terms, claiming my original rights as administrator of John Forbes, deceased, before the giving of the said unauthorized, illegal, and invalid deed of release. I have not received, and shall not receive, any part of the money paid by you to Mr. Blount, but will look to you and the original security for the debt due under the said mortgage. You will also take notice, that I have this day filed a copy of this notice in the office of the clerk of the superior court of Escambia among the papers relating to the suit in chancery, in which John Carnochan, Peter Mitchel, Louis McLane, Charles A. Davis, and Joseph M. White are complainants, and John Innerarity, administrator of John Forbes, deceased, James Innerarity in representative interest, and William H. Forbes, are respondents.

Yours, respectfully,

JOHN INNERARITY,

Administrator of John Forbes.

Pensacola, 19 *May*, 1840.

I hereby certify, that the deed of release given by Thomas M. Blount, esq., as attorney of John Innerarity, esq., administrator of John Forbes, deceased, to the trustees of the Apalachicola Land Co., bearing date 19 September, 1839, was this day filed by me at the request of John Carnochan, esq., in the office of the clerk of the superior court of Escambia county, and at the same time shewn to Mr. Innerarity, who most solemnly declared to me that he had not been previously aware of the existence of such a document, and in the most decided terms expressed his dissent therefrom. The aforesaid deed of release was handed to me by Mr. Carnochan during my absence from Pensacola, to which place I returned on the 16th instant.

WALKER ANDERSON.

Pensacola, *May* 19, 1840.

Filed, May 19, 1840. WM. W. J. KELLY, *Clk.*

Power of attorney.

Be it known to all whom it may or doth concern, that I, John Innerarity, of the city of Pensacola, administrator of the estate of the late John Forbes, duly appointed and qualified, do hereby make, constitute, and appoint Thomas M. Blount, esq., the president of the Bank of Pensacola, my true and lawful attorney, to receive from the trustees of the Apalachicola Land Company, in the city of New York, any sum or sums of money on account and in part payment of the mortgage on said lands, executed in favor of the said John Forbes, at the government office of West Florida in this city, on the thirtieth day of September, in the year one thousand eight hundred and twenty, for the sum of twenty-five thousand dollars principal, (and the corresponding interest until full and final payment,) and to give such receipt or receipts, release or releases therefor, as may be deemed requisite to exonerate the said trustees from so much of the said mortgage as may be paid by them on ac't, and in

part payment of the said incumbrance, to my aforesaid attorney Thomas M. Blount, esquire, hereby pledging, binding, and obligating myself to indorse a receipt for such sum or sums as may be thus paid by them, in part payment on the original deed of mortgage existing in the public protocol of the Spanish archives in this city, or to give any other release on account of such partial payment as may be deemed good, valid, and sufficient to the extent thereof, hereby ratifying and confirming whatever my attorney shall do in the premises.

In faith and testimony of all of which, I sign and seal the present letter or power of attorney, in the presence of the subscribing witnesses, in the city of Pensacola, this sixteenth day of August, one thousand eight hundred and thirty-nine.

JOHN INNERARITY [SEAL.]

Witness: M. CRUPPER.

TERRITORY OF FLORIDA, *Escambia county:*

This day John Innerarity personally appeared before me, M. Crupper, clerk of the court of the county aforesaid, and acknowledged that he had executed the foregoing instrument of writing for the uses and purposes therein mentioned. I further certify, that the said John Innerarity is the duly and legally qualified administrator of the late John Forbes.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at Pensacola, this 16 day of August, A. D. 1839. [SEAL.]

M. CRUPPER, *Clerk.*

TERRITORY OF FLORIDA, *county of Leon, ss:*

Be it remembered, that on this 4 day of January, 1840, the foregoing instrument of writing was presented to me, the subscriber, clerk of the county court for the county aforesaid, for record, and having the proper certificate of authentication thereon, I have duly recorded the same.

In testimony whereof I have hereunto set my hand and affixed my [SEAL] seal of office the date aforesaid.

D. McRAENY.

TERRITORY OF FLORIDA, *Franklin county, ss:*

I, George F. Baltzell, clerk of said county, do hereby certify the foregoing power of attorney, being duly certified, is duly recorded by me in book B, page 212, of the records of said county.

In testimony whereof I have hereunto set my hand and affixed the seal of said county, at Apalachicola, this 21 February, A. D. 1840. [SEAL.]

GEO. F. BALTZELL, *Clerk.*

TERRITORY OF FLORIDA, *Escambia county, ss:*

I, M. Crupper, clerk of said county, do hereby certify the foregoing power of attorney, being properly certified, is duly recorded by me in book G, page 165, of the records of said county.

In testimony whereof I have hereunto set my hand and affixed the [SEAL.] seal of said county at Pensacola, this 10 day of March, 1840.

M. CRUPPER, *Clk.*

"Filed 19 May, 1840."

WM. W. J. KELLY, *Clk.*

Protest of B. Marsh's acceptance $200 for Bergh & Arcularius, May 18, 1839.

UNITED STATES OF AMERICA, *State of New York, ss:*

On the eighteenth day of May, in the year of our Lord one thousand eight hundred and thirty-nine, at the request of Bergh and Arcularius, I, John B. Staples, notary public, duly admitted and sworn, dwelling in the city of New York, did present the original bill of exchange hereunto annexed, at the store of the acceptor for payment. A person there said it would not be paid. Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer, acceptor, and indorsers of said bill, as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, damages, and interests already incurred, or to be hereafter incurred, for want of payment thereof.

This done and protested in the city of New York, in the presence of John Doe and Richard Roe, witnesses.

In testimonium veritatis.

[SEAL.]

JOHN B. STAPLES,
Notary public, Merchants' Exchange Bank.

PENSACOLA, *April* 1, 1839.

Exch. for $200.

Thirty days after sight of this my first of exchange, (second of same tenor and date unpaid,) please pay to the order of George W. Barkley, esq., two hundred dollars for value received, as per advice from

Your most ob't serv't,

JOHN INNERARITY.

B. MARSH, esq.,
Corner of Jacob and Ferry streets, New York.

Due May 18.

Accepted, 30 April, 1839.

B. MARSH.

Endorsed.—Pay the within am't to the order of Mess. Bergh & Arcularius.

GEO. W. BARKLEY.
BERGH & ARCULARIUS.

Protest of B. Marsh's acceptance $200 for Bergh & Arcularius, May 18, 1839.

UNITED STATES OF AMERICA, *State of New York, ss:*

On the 18th day of May, in the year of our Lord one thousand eight hundred and thirty-nine, at the request of Bergh and Arcularius, I, John

B. Staples, notary public, duly admitted and sworn, dwelling in the city of New York, did present the original bill of exchange hereunto annexed, at the store of the acceptor for payment. A person there said it would not be paid to-day.

Wherefore I, the said notary, at the request aforesaid did protest, and by these presents do publicly and solemnly protest, as well against the drawer, acceptor, and indorsers of the said bill, as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, damages, and interest incurred, or to be hereafter incurred, for want of payment thereof.

This done and protested, in *in* the city of New York aforesaid, in the presence of John Doe and Richard Roe, witnesses.

In testimonium veritatis.

[L. S.] JOHN B. STAPLES,
Notary public Merchants' Exchange bank.

$200—*Second.* PENSACOLA, 30 *January*, 1839.

Thirty days after sight of this my second of exchange, (first of the same tenor and date being unpaid,) please pay to George W. Barkley, esq., or order, two hundred dollars, for value received, as per advice from

Your most obedient servant,
JOHN INNERARITY.

BENJ'N MARSH, esq.,
Corner of Jacob and Ferry streets, New York.

Accepted, April 15, 1839.
B. MARSH.

Endorsed.—Pay the within amount to Messrs. Bergh & Arcularius.
GEO. W. BARKLEY.
BERGH & ARCULARIUS.

STATE OF NEW YORK, *United States of America, ss:*

On this day, the fifteenth day of June, in the year of our Lord one thousand eight hundred and thirty-nine, at the request of the Bank of New York, I, William D. Waddington, notary public, duly admitted and sworn, dwelling in the city of New York, did present the original bill of exchange to the acceptor, and demanded of him payment thereof, which he refused.

Whereupon I, the said notary, at the request aforesaid did protest, and do by these presents publicly and solemnly protest, as well against the drawer, acceptor, and indorsers of the said bill of exchange, as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, charges, damages, and interest already incurred, and to be hereafter incurred, for want of payment of the said bill of exchange.

Thus done and protested, in the city of New York aforesaid, in the presence of John Doe and Richard Roe, witnesses.

In testimonium veritatis.

[L. S] W. D. WADDINGTON,
Notary public, corner of Wall and New streets.

Exch. for $200. PENSACOLA, *May* 1, 1839.

Thirty days after sight of this my first of exchange, (second of the same tenor and date unpaid,) pay to the order of George W. Barkley, esq., two hundred dollars, for value received, as per advice from

Your most obedient servant,

JOHN INNERARITY.

B. MARSH, esq.,
Corner of Jacob and Ferry streets, New York.

Endorsed.—Pay to the order of Messrs. Bergh & Ascularius.

GEO. W. BARKLEY.

BERGH & ASCULARIUS.

Memorandum.

For Mr. Blount, at 176 Front street, at M. Treadwell's.

$200	B. Marsh accep., due			May	18,	5 ms.	3 days.
200	"	"		May	18,	5 "	3 "
200	"	"		June	16,	4 "	5 "

200	5 ms.	3 days	5	95	int.
200	5 "	3 "	5	95	"
200	4 "	5 "	4	86	"
		Protest	2	25	
			19	01	
Received	650		600	00	
	619				
			619	01	
	$31 due you.				

Statement of Blount.

Amount received by Mr. Blount - - -		13,241 75
From which is to be deducted the following:		
Am't paid J. Innerarity, 3 bills on B. March	619 00	
Amount Mr. Blount's bills - -	2,451 51	
		3,070 51
		10,171 24
Amount of check enclosed - -		10,171 24

Mr. Innerarity has the statement drawn out in full.

T. M. B.

Admitted to be Blount's writing.

ANDERSON,
For INNERARITY.

Copy of check from Blount.—(Copy.)

PENSACOLA, *February* 22, 1840.

$10,171 24. Cashier of the Bank of Pensacola, pay James Catlin, esquire, or order, ten thousand one hundred and seventy-one dollars, twenty-four cents.

(Signed) T. M. BLOUNT.

(*Copy.*)

I, John Innerarity, administrator of John Forbes, deceased, do hereby acknowledge to have received from George Griswold and Lewis Curtis, trustees of the Apalachicola Land Company, by the hands of Thomas M. Blount, thirteen thousand two hundred and forty-one dollars seventy-five cents, on account of this mortgage.

Mem.

When the trustees consent, Mr. Catlin will please pay over to Mr. Innerarity the check enclosed, upon Mr. I. entering satisfaction upon the record of the mortgage, in the office of the keeper of the public archives; the satisfaction to be made in the above form.

(Signed) T. M. BLOUNT.

Conditional bond.

We, Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company, do hereby acknowledge, that in the settlement that took place between Thomas M. Blount, as attorney in fact of John Innerarity, administrator of John Forbes, deceased, and ourselves, the sum of five thousand [dollars] was deducted from the last instalment due on the mortgage upon the moiety of the Forbes' purchase; which sum of five thousand dollars, with interest at the rate of six per centum per annum from the 8 day of December, 1821, is to be paid over to the parties entitled to receive the same, upon a final settlement of the accounts of the late firm of Carnochan & Mitchel with the original proprietors of the tract of land known as the Forbes' purchase, in Florida. And we do hereby agree to hold the said funds, that is, five thousand dollars, with the interest as aforesaid, subject to the decision aforesaid.

Witness our hands at New York the 19th day of September, 1839.

LEWIS CURTIS,
GEO. GRISWOLD,
Trustees of the Apalachicola Land Company.

Testimony.

[Commission to take depositions.]

TERRITORY OF FLORIDA, *Escambia county.*

By his honor Dillon Jordan, judge of the superior court for the district of West Florida, to B. J. Woodloe and Tho. A. McIver, greeting:

Whereas, there is a certain controversy now depending in the said court for the county and district aforesaid, between John Innerarity, administrator of John Forbes, deceased, and Lewis Curtis, George Gris-

wold, trustees of the Apalachicola Land Company, and Thomas M. Blount and others; and whereas James Catlin is a material witness in said matter of controversy, and cannot attend our said court in person without manifest inconvenience: Now, know ye, that we, reposing special trust and confidence in your prudence and fidelity, have appointed you; and you, or any two of you, are hereby authorized and required to cause the said James Catlin personally to come before you, and after being duly sworn, to examine him concerning the said matter of controversy agreeably to the interrogatories hereunto annexed; and the answers to the same being plainly and distinctly written, you are to send the same, closed up, under your hands and seals, to our said court, to be held on the fourth Monday in September, instant, together with this writ.

Witness Wm. W. J. Kelly, clerk of this court, this 6 day of Septem-
[SEAL.] ber, A. D. 1841, and of the independence of the United States the 65th year.

WM. WASHINGTON J. KELLY, *Clerk.*

Interrogatories to be propounded to James Catlin in the suit between John Innerarity, administrator, &c., vs. George Griswold and Lewis Curtis, trustees of the Apalachicola Land Company, and Thomas M. Blount and others.

1. What is your age, residence, and occupation?
2. Do you know Thomas M. Blount?
3. Did he or not, in the winter of 1839–'40, or at any other time, leave with you any money to be paid to John Innerarity? Was it on account of the Apalachicola Land Company?
4. If yea, how much, and of what kind?
5. Detail, as particularly as you can, the instructions left with you by Mr. Blount in regard to the payment of the money to Mr. Innerarity.
6. What was the character, and, as near as you can remember, the terms of the check left with you for the payment of the money?
7. What were you required to demand from Mr. Innerarity before you were to let him have the money left with you?
8. Did you propose the terms to Mr. Innerarity? Did he accept or decline them?
9. What became of the money that was in your hands, or in the Bank of Pensacola, for the purpose above mentioned?
10. What other instructions did you receive from Mr. Blount about it?
11. If you know any thing more favorable to the plaintiff, please state it?

WALKER ANDERSON,
Sol'r for compl't.

Questions by counsel for defendants.

Have you got in your possession copies of the papers alluded to in the above interrogatories? If yea, give them in full in your answers.

Question. Do you know any thing else favorable to the defendants?

V. BUTLER,
For defendants.

Mr. Catlin will much oblige the parties by getting two of his neighbors to act as commissioners to his testimony, and return the same as directed in the commission, that is, sealed up with the names of the commissioners across the seals. Mr. C. will please to sign his own name to the answers after they are written. W. A.

Mr. C. will observe that the time is near at hand.

Answers to interrogatories propounded to James Catlin in the suit between John Innerarity, administrator, &c., vs. George Griswold and Lewis Curtis, trustees of the Apalachicola Land Company, and Thomas M. Blount and others.

Answers.

1st. Age, 41 years, residence, Brooklyn, Ala., occupation, teacher in academy.

2d. Knew Thomas M. Blount.

3d. About the time mentioned in this interrogatory Thomas M. Blount deposited in the Bank of Pensacola, of which I was then cashier, about ten thousand six hundred dollars to his own credit; he stated that he had collected the money for the Apala. Land Company, and that he would want like funds when he settled with said Company.

4. Amount as stated in answer 3d; kind New York funds, considered equivalent to specie.

5. Mr. Blount informed me that the amount he had collected in New York for said Apala. Land Co. was upwards of thirteen thousand dollars, but as he had an account against Mr. John Innerarity of about three thousand dollars, which he should retain, the balance due said Company would be the amount deposited in the Bank of Pensacola, say about $10,600. Some months after the above sum was deposited, and on the eve of his departure for New York, Mr. Blount enclosed me a package of papers relative to his transactions with the Apalachicola Company; among which papers was a check drawn by Mr. Blount on the Bank of Pensacola, payable to my order, (I think,) for the amount of deposit. My instructions, however, were not to endorse or pay the said check, except on certain conditions, which are stated in answer 4th.

6. The character and terms of the check were not extraordinary, so far as I recollect; not differing, in itself, from the checks he usually made on his individual account.

7. Before paying the said check I was required to demand of Mr. Innerarity his acknowledgement of satisfaction of a certain mortgage on record in the office of Jos. E. Caro. As I have none of the papers referred to with me, I cannot state particularly their purport. By an order of court I was required to place the said papers in the hands of the clerk of the court, to be placed on file; the papers or copies, therefore, in possession of the court, to which I must refer.

8. I did propose to Mr. Innerarity the terms required by Mr. Blount, and shewed him all the papers—which terms he did not accept.

9. Some time after proposing the terms to Mr. Innerarity, the individual deposit account of Mr. Blount was debited with certain notes of

.s which fell due in his absence, the amount of which nearly or quite exhausted his deposit. On Mr. Blount's return from New York, he had the privilege to renew said notes, and restore his deposits; but whether he availed himself of the privilege, I am not informed. If the $10,600 had been placed in special deposit, the bank could not have appropriated it; but as it was in all respects an individual deposit, the bank could place debits against it, and Mr. Blount could have used it for any other purpose if he chose to do so.

10. I received no other instructions from Mr. Blount than those contained in the papers referred to in answer 7th.

11. I know nothing more favorable to the plaintiff.

JAMES CATLIN.

Questions by the counsel of defendant.

Have you got in your possession copies of the papers alluded to in the above interrogatories? If yea, give them in full in your answer?

Answer. I have got no copies of said papers.

Question. Do you know any thing else favorable to defendants.

Answer. I know of nothing more that would favor the defendants.

JAMES CATLIN.

STATE OF ALABAMA, *Conecuh co., ss:*

Personally appeared before us, Thomas A. McIvor and B. J. Goodloe, commissioners appointed by the judge of the superior court of Escambia county, Territory of Florida, James Catlin, and made oath to the foregoing answers to the interrogatories herewith enclosed. Brooklyn, Ala., Sept. 16, 1841,

B. J. GOODLOE,
THO. McIVOR,
Commissioners.

JOHN INNERARITY, adm'r, &c. vs. TRUSTEES APA. LAND CO. } In equity.

United States superior court of Escambia county, district West Florida:

Interrogatories to be propounded to Charles Evans, to be read in evidence in the above case on behalf of the defendants.

1. What is your name, age, occupation, and residence?

2. Did you know John Forbes now deceased, and where did he reside?

3. Was you acquainted with the firm of John Forbes & Co.; if yea, what was the nature of their trade in business?

4. Was you acquainted with the tract of land purchased from the Indians by them?

5. Was this land ever settled by the whites; if so, in what year was it first settled?

6. Did not the company sell you a portion of this land?

7. Did you ever settle on and improve it? if yea, in what year?

8. Was the firm of John Forbes & Co. permanent or transient traders on the purchase?

Answers of Charles Evans.

Answer 1 question. Aged thirty-nine; occupation, judge of the county court, residence in the city of Pensacola.

Answer to 2 question. I knew him, and always understood that he resided in the island of Cuba.

3 answer. I was acquainted with the firm of John Forbes & Co.; they were extensive traders at Pensacola, and had branches throughout the country, together with Indian trading-houses on the Apalachicola river, on the Forbes' purchase.

4 answer. I was.

5 answer. I settled on a piece of land reserved from the Forbes' purchase, belonging to James Innerarity, in the year 1821, and improved two others belonging to John Innerarity in the same year; and at that time John Carnochan and Henry Younge were settled on Forbes' tract.

6 answer. No.

7 answer. See 5 answer.

8 ———. They were residents there till the establishment was broken up in 1818 by the war.

C. EVANS.

Sworn to before me, this 9 Oct., 1841.

BENJ. D. WRIGHT, *J. P.*

It is agreed between the parties that the above testimony be read in the case of Innerarity vs. Trustees of the Apa. L'd Comp.

ANDERSON, *for compl't.*
BUTLER, *for def't.*

Mr. Evans, being further examined, says, from information, Forbes' purchase contains about 1,200,000 acres; knows of no other person settled on the tract at the time alluded to, except *except* Yonge and Carnochan, and some United States troops stationed at Fort Gadsden; the Indians were in the habit of hunting in the purchase at that time; does not know that they had settlements within it. Asked whether Mr. Carnochan settled there with a view to the assertion and maintenance of the title—says he does not know. Not inferred it from conversation and other McKinnon, the surveyor, told the deponent he was surveying the land for Carnochan & Mitchel; says the town of Apalachicola was a wilderness in 1821; says he was at Saint Marks in 1819, and remained till February, 1820; there was a Spanish garrison there, and a trade carried on with the Indians extensively; there were no whites settled near them in any direction; it was considered dangerous to go outside of the fort for fear of the Indians; after deponent left, he heard that the pilot of the fort, Lorenzo, was murdered by the Indians on the west side of the Wakulla. Deponent says there were supplies kept in store, by the house of which he was clerk, to the amount of between one and two thousand dollars, and that was the only house. The fort was much dilapidated when he was there in 1819, and was an old

building then. His was the only building outside the fort, except some temporary camps.

C. EVANS.

Admitted without oath by consent of parties.

ANDERSON, *Sol. for comp.*
BALTZELL, *for trustees Land Co.*

TERRITORY OF FLORIDA, *Escambia county:*

By his honor Dillon Jordan, judge of the superior court of the county of Escambia, in chancery sitting, to Henry J. Wiggins, (party defendant consenting to his acting alone,) greeting:

Whereas, there is a controversy now depending in our said court between John Innerarity, administrator of John Forbes, deceased, and Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company; and whereas, Henry Wilson and Isaac Hulse are material witnesses in said matter of controversy:

Now know ye, that we, reposing special trust and confidence in your prudence and fidelity, have appointed you, and you are hereby authorized and required to cause the said Henry Wilson and Isaac Hulse personally to come before you, and after being duly sworn to examine them concerning the said matter of controversy, agreeably to the interrogatories hereunto annexed, and the answers of the same being plainly and distinctly written, you are to send the same closed up, under your hands and seals, to our said court, together with this writ.

Witness the honorable Dillon Jordan, judge of said court, this twelfth day of May, A D. 1841, and in the 65th year of the independence of the United States.

WM. WASHINGTON J. KELLY, *Clerk.*

INNERARITY, adm'r, &c.,
vs.
APALA. LAND CO.
} Cross bill.—In chancery.

Escambia sup. court.

Interrogatories to be propounded to Henry Wilson and Isaac Hulse.

1. What is your age, residence, and occupation?
2. Have you had any conversation with Thomas M. Blount, one of the parties in the above suit in relation to it?
3. If yea, what was the purport of such conversation?
4. If you know any thing more, favorable to the plaintiff, please to state it at large.

W. ANDERSON, *for plff.*

Cross interrogatories.

Please state the words of the conversation, and their spirit as far as you can—when and how it occurred, who were present, &c.

If you know any thing favorable to defendant, please state it.

T. BALTZELL, *for defendant.*

The defendants object to any examination of Blount as improper and illegal, because he is his own attorney and solicitor, and because Blount himself should be examined.

BALTZELL, *for deft.*

T. BALTZELL, Esq.

SIR: Please to take notice, that on the 10 April, 1841, I shall apply to the clerk of the superior court of Escambia for a commission to examine the above witnesses on the above interrogatories.

Respectfully, W. ANDERSON, *Att'y for plff.*

March 12, 1841.

Isaac Hulse being sworn and examined on the foregoing interrogatories by M. Crupper, on the 12th day of May, 1841, answereth as follows:

To the first interrogatory. His age is forty-three; his residence, Pensacola; and occupation, that of a surgeon in the United States Navy.

To the second interrogatory. He has had a conversation with him in relation to the subject now in controversy between the parties.

To the 3d interrogatory. He was requested to take a note to Thomas M. Blount by John Innerarity, the object of which was to obtain an interview with him—he having avoided Innerarity, as Innerarity supposed, so long as to induce Innerarity to think the Blount was anxious to escape an interview. Mr. Innerarity had informed deponent that Blount had brought thirteen thousand dollars, as he understood, from the Apalachicola Land Company for him, and was unable to obtain an interview with him to learn what disposition had been made of the money. Blount at first expressed surprise that Innerarity should have taken such steps to obtain an interview. He said Innerarity, it was, who had thrown difficulties in the way of a settlement. He was anxious to have it settled, as he represented the Apalachicola Land Company, and was their agent. He consented to an interview, which took place in the afternoon of the same day.

To the fourth interrogatory he said, he knows nothing further.

To the first cross interrogatory he saith, he has already answered it as nearly as he can, and that no one was present.

To the 2d cross interrogatory, he knows nothing further.

ISAAC HULSE.

Sworn to and subscribed before me, the ninth day of October, 1841.

HENRY J. WIGGINS, [L. S.]

Commissioner.

Interrogatories to be propounded to Isaac Hulse and Henry J. Wilson in the case of John Innerarity, administrator of John Forbes, deceased, and Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company, Thomas M. Blount and others.

To Henry J. Wilson and Isaac Hulse.

1. What is your age, residence, and occupation?
2. Are you acquainted with Thomas M. Blount?

872.

3. Did you or not carry a letter to him from John Innerarity early in the year 1840.

4. State, as particularly as you can, the conversation you had with Mr. Blount on that occasion.

5. If you [know] any thing more favorable to complainant, please state it?

WALKER ANDERSON, *Sol. for complt.*

To Benjamin D. Wright, esq.

1. Are you acquainted with the handwriting of Thomas M. Blount? If yea, how is your knowledge acquired?

2. Are the two papers appended to this sheet, and marked A and B, in the handwriting of Thomas M. Blount?

W. ANDERSON, *Sol. for complt.*

Cross interrogatories.

1. What was the occasion of your conversation with Mr. Blount?

2. At the time of your conversation with Mr. Blount, did you know the extent of the powers given to Blount by Innerarity, in the affairs of the land company?

3. Is the letter of the 5 February, 1840, of Mr. Blount, hereto appended, the answer you carried to Mr. Innerarity from Mr. Blount?

4. Does the contents of this letter agree with the conversation you held with Blount at the time?

5. Did you know from Innerarity that Blount was authorized to receive money for him—(I)—and did you understand from Blount, that the money he (B) has received from the land company would be paid if Innerarity would cancel the mortgage?

6. At the time that Innerarity requested you to seek an interview with Blount, did you know or hear what was the reason that Innerarity did not get the money under Blount's contract from the land company?

7. Do you know what mortgage Blount alluded to in his conversation with you?

8. Do you know any thing about this mortgage, or about the cause of the difficulties between the parties to it?

A. (Appended to interrogatories.)

PENSACOLA, *February* 5, 1840.

MY DEAR SIR: I have received your notes by the hands of Major Wilson. I am, and have been, ready to pay over the amount I received, the moment the trustees of the Apalachicola Land Company consent to the proposition made them. The money, you are aware, although nominally under my control, has never been in fact in my possession. I have never mingled it with my own affairs, but have left the same in such a position as to answer its being paid to the parties entitled to recover it by the bank. I shall prepare all the necessary statements and receipts, and leave them with Mr. Catlin, so that the matter can be adjusted whether I am here or not. These statements I shall of course

submit to you before hand, and leave the thing definitively understood before I leave, which will be some days hence.

I am, very respectfully and truly, yours,

T. M. BLOUNT.

JOHN INNERARITY, Esq, *Pensacola.*

B. (Also appended)

21,743 45. Accepted, to be paid when a release of a certain mortgage executed by Octavius Mitchel upon an undivided moiety of the tract of land known *known* as the Forbes' purchase in M. Florida, dated the 8th, 1820, is released and discharged for the amount of $21,743 75. In the mean time this amount, 13,241 75, is to draw interest at 6 p. c. per annum.

Answers.

Henry J. Wilson being duly sworn to answer the foregoing interrogatories in the case of John Innerarity, administrator, &c., vs. Lewis Curtis and George Griswold, trustees, &c., and others, answereth and saith—

1. To the first he answereth, that he is forty-six years of age, is an officer in the United States army, and is at present stationed in Middle Florida.

2. He is.

3. He did, on or about the 5 day of February, 1840.

4. He refers to, and reads, a letter written at the time on the subject to Mr. Innerarity, in which is stated to Mr. Innerarity the substance of the conversation. His present recollection is also distinct, that the following was the import of the conversation: that the money paid to him by the trustees of the Apalachicola Land Company, or which he controlled, had been received by him conditionally, subject to Mr. Innerarity's approval; that on his (Mr. Innerarity's) cancelling the mortgage, he, Blount, as the agent of the land company, was authorized to have it paid to him, (Innerarity.) He further observed that the money, though under his control, was not in his possession, being in the Bank of Pensacola, to be paid over on the above conditions; that it should be paid the moment Mr. Innerarity should cancel the mortgage. The letter to Mr. I. is hereto appended.

5. He knows nothing more.

To the cross interrogatories he answereth:

1. He waited on Mr. Blount, at the request of Mr. Innerarity, to endeavor to procure an explanation from him in relation to his negotiation with the trustees of the Apalachicola Land Company.

2. He did not.

3. It is the same to the best of his recollection.

4. He has stated the conversation as nearly as possible, and thinks the letter corresponds with it in substance.

5. He does not recollect distinctly, but is under the impression that Blount was authorized to receive money. To the latter part of this question he has already answered.

6. He knows nothing of this.

7. As he understood from all the parties, it was a mortgage on the land known as Forbes' purchase, on which certain money was secured to be paid by the Apalachicola Land Company to Mr. Innerarity, as administrator of John Forbes. He does not know by whom the mortgage was given.

8th. He does not.

H J. WILSON.

TERRITORY OF FLORIDA, *Escambia county, ss:*

Personally came before me, M. Crupper, a justice of the peace, Henry Wilson, who being sworn, says, the answers to the questions above propounded are true.

Sworn to, and subscribed, this 8 Sept., 1840.

M. CRUPPER, *J. P. E. co.*

These depositions were taken by consent, to be subject to all objections to improper questions, references, and answers, on trial.

W. ANDERSON, *for plaintiff.*
V. BUTLER, *for defendant.*

(*Letter appended.*)

PENSACOLA, 26 *February*, 1840.

SIR: I have the honor to state, in reply to your note of this morning requesting to be informed of the conversation between Mr. Blount and myself, on delivering to him your note of the 5 instant, that he told me distinctly that the money paid over to him (or which he controlled) by the trustees of the Apalachicola Land Company, had been received *conditionally, subject to your approval;* that is, on your cancelling the mortgage, he, as *their agent*, was authorized to have it paid to you; which he stated would be done by the Bank [of] Pensacola, in specie, the moment you cancelled the mortgage. He moreover stated, that the trustees were anxious to have the mortgage removed, on account of the disadvantages of disposing of the property with an incumbrance; that it prejudiced persons against purchasers, and that the claim of the mortgage against the company was not at all injured by its removal.

I am, sir, very respectfully, your obedient servant,

H. J. WILSON.

To JOHN INNERARITY, Esq., *Present.*

Answer of Benjamin D. Wright, esq., to the interrogatories propounded to him.

He being sworn, to the 1st interrogatory saith, that he is acquainted with the handwriting of Thomas M. Blount, and acquired his knowledge of it from having seen him write frequently.

To the second interrogatory he saith, that the papers referred to are in the handwriting of Thomas M. Blount.

BENJ. D. WRIGHT.

Sworn to and subscribed, before me, this 11th day of October, 1841.

M. CRUPPER, *J. P. E. C.*

Opinion.

JOHN INNERARITY, adm'r of John Forbes,
vs.
LEWIS CURTIS and George Griswold, trustees, &c. } In chancery.

Bill to foreclose mortgage.—November term, 1841.

This cause coming on to be heard upon bill, answer, and depositions, it appears that the mortgage, the foreclosure of which is the object of the bill of complaint, was executed by Octavius Mitchel, to John Forbes, on the ninth day of September, 1820, to secure the payment of twenty-five thousand dollars, supposed to be the balance remaining due upon the Forbes' purchase; that this sum was to be paid in two instalments of twelve thousand five hundred dollars each, the first payable in eight months, and the second in eighteen months, from the date of said mortgage; that John Forbes, the mortgager, died some time in the year 1822, at Matanzas, subsequent to the time fixed for the payment of the second and last instalment, leaving a last will and testament, wherein he appointed Edmund Depestre and Francis Dalcour, executors, which last will and testament has never been offered for probate in this Territory, and that letters of administration on the estate of John Forbes, were duly granted to the complainant, on the fifth day of July, 1836; that subsequent to the execution of said mortgage, the legal title to the said Forbes' purchase was transferred to Lewis McLane and others as trustees; that the present defendants are their successors in said trustship.

It is declared to be the opinion of the court, that if the bill of exchange on London was given as alleged by complainant in payment of the first instalment, and returned protested for non payment, the complainant has his remedy thereon at law, and cannot invoke the aid of this court in enforcing payment of said bill, with the damages thereon.

That inasmuch as the complainant is driven into the courts of common law, to recover the amount of said bill of exchange, with the damages thereon, the respondents in this cause cannot in this court be allowed the payment of $4,832 35, which they profess to have paid Thomas M. Blount, as agent of complainant, in full of the balance supposed to be due on said bill of exchange, especially as they expressly and specifically so appropriated that payment; they too must go into the courts of common law, and the action which shall be brought upon the said bill of exchange, claim this payment, and if the plaintiff in such action shall, after having obtained a judgment for the debt and damages, attempt to enforce full payment thereof, it will be competent for these defendants, after having paid the mortgage money, perpetually to restrain the plaintiff from collecting any more on said judgment than the damages which shall have been assessed on said bill of *bill of* exchange, or to pay off said judgment in full, and invoke the aid of a court of equity in having the same credited on the mortgage, or the decree which may have been awarded therein.

It is also declared to be the opinion of this court, that the letter of at-

torney, from the complainants to Thomas M. Blount, gave him no authority to compromise the demands of complainant, upon these defendants; nor to cancel the said mortgage, in whole or in part, but simply to give proper receipts and releases, for such sum or sums of money as should be paid to him by these defendants.

It is apparent that the limited and restricted character of the agency of Blount was known to these defendants, for they had the letter of attorney before them; yet they paid, and he accepted, the sum of $4,832 35, in full of the balance due on said bill of exchange, (a sum vastly short of that insisted upon by the complainants,) and upon receipt of $8,325 38 more, he, the said Blount, undertook, (in the language of the release,) "to release and discharge said mortgage for the one-half, upon the records at Pensacola, and in Gadsden county, thus compromising the rights of his principal, and undertaking to cancel said mortgage, pro tanto, on the records at Pensacola, and in Gadsden county, powers which it is manifest were not delegated to him by said letter of attorney.

The release seems to indicate these to be the terms and the conditions of the aforesaid payments to Blount, fairly inferrable from the acceptance by defendants. They are therefore, in equity and conscience, compelled to adhere to them and abide the consequences, and should not be admitted (in the event of a repudiation of the acts of Blount by his principal) to fly off from them; and insist, that if the release be void, yet the payment is good pro tanto, thus placing the complainant in the dilemma of submitting involuntarily to an unjust compromise of his rights, or a loss of that amount, by the fraud and perfidy of his agent. An agent must act within the limits of his authority, or his principal is not bound; if the authority be not strictly pursued, and the act done substantially varies from it, it is void.

It is therefore the opinion of the court, that the release given by Thomas M. Blount to these defendants, was in excess of his authority, and in derogation of the rights of complainant; that these defendants were fully advised of the fact. That the release is therefore void, and the defendants precluded from taking benefit from the release for which it was given. It is argued by defendants, that if the release given by Blount be void, then they are entitled to a credit on the mortgage for the sum paid to him as agent. The court is of the opinion that, under the circumstances of this case, the defendants cannot assert this right, unless they bring the fund into court, or secure it. It being evident, that since the refusal of complainant to receive the money from Blount, and *the* therefore to confirm, recognize, and adopt the release (for such would undoubtedly have been the effect of his acceptance of it,) it has been withheld by said Blount, from whom there is little or no prospect of recovering it, he being now in contempt of a rule of this court, requiring him to bring the money into this office.

It is further declared to be the opinion of this court, that defendants are bound to pay six per cent. interest on the mortgage debt, for the whole of it became due before the demise of John Forbes, the mortgagee, and after his death he was represented by executors appointed in his

last will and testament, who could have been compelled, by the judicial tribunals of the country to cancel the mortgage, upon the tender of principal and interest by defendants; that the court cannot afford the any relief in regard to the deficit in the number of acres, created by the recovering, by the General Government, of the fort at St. Mark's, and the land immediately adjoining. The defendants must resort to their actions at common law, based upon the covenants of title contained in the deeds of feoffment, under which they claim; and that no deduction can be made for the costs and charges incurred by defendants in quieting their title to the lands, for the security of the purchase price of which this mortgage was given, they having at law no claim for remuneration or reimbursement, upon the grantors or feoffers, except in case of eviction, under a higher and better outstanding title in a stranger.

It is also further declared to be the opinion of the court, that the defendants are not entitled to a credit of £375, alleged to be an overpurchase, by mistake, included in the settlement made at the time the balance of $25,000 was ascertained to be due. The only evidence submitted on this point is the evidence of Depestre, one of the executors *of* of John Forbes, deceased, from which it appears that there was originally an overpayment of $5,000, which was afterwards refunded to Mitchel, and not $10,000, as claimed by him. That the defendants are entitled to the credits made to James Innerarity.

(Decree.)

It is therefore ordered, adjudged, and decreed, that there is due, on account of the mortgage, for principal and interest, fifty thousand and one hundred and fifty-nine dollars and sixty-one cents, and that the defendants pay unto the complainant the said sum within sixty days of the expiration of this term, with costs of this suit. And thereupon the said complainants, to recover the said mortgaged premises, free and clear of all incumbrances by him, or any person claiming by, through, or under him, and deliver up unto defendants all deeds and writings in his custody, or power relating thereto; but in default of said defendants paying unto the said complainant such principal, interest, and costs, as aforesaid, by the time aforesaid, the said defendants are from thenceforth to stand debarred and foreclosed of and from all equity of redemption of, in, and to the said mortgaged premises.

DILLON JORDAN, *Judge*

DISTRICT OF WEST FLORIDA, *Escambia county:*

I, W. W. J. Kelly, clerk of the superior court for the county aforesaid, do hereby certify, that the foregoing is a true copy of the records of the proceedings in this cause, as fully as the same appear on file in my said office.

W. WASHINGTON J. KELLY, *Cl'k.*

And at another day, to wit, on the 15 January, A. D. 1844, the appellants in this cause, by stipulation of the parties, offered and read in evidence before our said court of appeals the following documents or

writings, as part of the record herein before recited; which documents or writings, numbered from one to seven, inclusive, are in the following words and figures:

No. 1.

TERRITORY OF FLORIDA, *Escambia county:*

By his honor Dillon Jordan, judge of the United States for the district of West Florida, to James S. Calhoun and Alf. L. Alfson, esquires, greeting:

Whereas, there is a certain controversy now pending in the superior court for said county between John Innerarity, administrator of the estate of John Forbes, deceased, and Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company, in chancery. And whereas Octavius Mitchel and others are material witnesses in said matter of controversy, and cannot attend our said court in person without manifest inconvenience: Now, know ye, that we, reposing special trust and confidence in your prudence and fidelity, have appointed you; and you, or any two of you, are hereby authorized and required to cause the said Octavius Mitchel personally to come before you, and, after being duly sworn, to examine them concerning the matter of controversy agreeably to the interrogatories hereunto annexed; and the answers to the same being plainly and distinctly written, you are to send the same, closed up, under your hands and seals, to our said court, to be held on the first Monday of November next, together with this writ.

Witness the honorable Dillon Jordan, judge of said court, this 12th day of October, A. D. 1841, and of the independence of the United States the sixty-fifth.

[SEAL.] WM. W. J. KELLY, *Clerk.*
By CAMERON ANDERSON, *D. C.*

Interrogatories for Benjamin Morrison, Mr. Colin Mitchel, Joseph Mitchel, and Octavius Mitchel, and Robert Morrison, witnesses for respondents in a suit depending in the superior court for the county of Escambia, in the Territory of Florida, between John Innerarity, administrator of John Forbes, deceased, complainant, and the trustees of the Apalachicola Land Company, defendants, Lewis Curtis and George Griswold:

Interrogatory 1. What is your age, profession, and occupation?

2ndly. Do you know the parties?

3rdly. Do you, or not, know of a payment made by the late Colin Mitchel to the late Wm. H. Forbes, of seven thousand and 841 dollars or thereabouts, in or about the year 1823, on account of his purchase of land known as Forbes' purchase, in the Territory of Florida; if so, state when and where the payment was made, and all you know on the subject; if you have a writing in your possession, as evidence of said receipt, please attach it to your deposition.

4. Did you ever hear the said Forbes, in his lifetime, or his executors or administrators, since his death, admit said payment? if so, state it.

5th. State any thing further within your knowledge that will benefit respondents.

THOMAS BALTZELL,
Sol'r for respondents.

Cross interrogatory.

State in detail all that you know in relation to the transaction referred to above.

W. ANDERSON,
Solicitor for complainant.

HAVANA, *Island of Cuba:*

By virtue of a commission issued by his honor Dillon Jordan, judge of the United States for the district of West Florida, we, James S. Calhoun and have caused Joseph Mitchel and Robert Morrison to come before us, and after having duly sworn them on the holy evangelists true answers to make to the annexed interrogatories concerning the matter in controversy in a suit depending in the superior court for the county of Escambia, in the Territory of Florida, wherein John Innerarity, administrator of John Forbes, deceased, is complainant, and the trustees of the Apalachicola Land Company defendants, they answered as follows:

Joseph Mitchel answereth to the 1st interrogatory—I am about thirty years old, a merchant by profession, and now engaged as such.

2. To the *second* interrogatory he answers—I do not know the parties.

3. To the third interrogatory he answers—I know nothing of the payment alluded to, except what I have been able to gather from a paper in my possession, a copy of which I annex, marked A.

4. To the fourth interrogatory he answers—Personally I know nothing of the said Forbes, and never heard him utter a word.

5. To the fifth interrogatory he answers—As the transactions alluded to are of nineteen years' standing, the commercial books of that period have been laid aside, and I have not been able to investigate the subject farther.

The said Joseph Mitchel answers to the cross interrogatory as follows—I have no knowledge in relation to the transactions referred to beyond what I have already stated.

JOSEPH MITCHEL.

Answered, sworn to, and subscribed before us, in the city of Havana, June 18, 1842.

JAMES S. CALHOUN, [SEAL.]
ALF. L. ALFSSON. [SEAL.]

Robert Morrison answers, to the *first interrogatory*—I am about fifty years old, and a merchant.

2. To the *second* interrogatory he answers—I have no personal acquaintance with the acting parties to the suit, but have had acquaintance with some concerned.

3. To the third interrogatory he answers—I have knowledge of that payment, and wrote out the receipt for it, a copy of which is produced by Joseph Mitchel, and annexed to his answers, marked A. From the lapse of time, has no distinct or positive recollection of any of the particulars, but thinks that the obligation in favor of Mess. W. Duff & Co. was paid to their representative as soon as it was made, and also that the sum reserved for the use of Mrs. T. B. Williams was paid subsequently.

4. To the fourth interrogatory he answers—I have conversed with the late W. H. Forbes upon this subject on or about the date of the receipt hereto attached, marked A.

5. To the fifth interrogatory he answers—I have no doubt but that the payment of seven thousand eight hundred and forty-one dollars and one rial was made, although I cannot state more of the particulars than appears in the receipt.

The said Robert Morrison answers, to the cross interrogatory—I cannot, as already stated, give distinct particulars, but I have a distinct recollection that the late William H. Forbes came from his country property to town, and claimed payment of the protested bills. I know positively that he was indebted to Mess. W. Duff & Co., and I have all but a positive recollection that they had a representative in Havana at the same time, who urged W. H. Forbes for payment. I have often heard from others, as well as from W. H. Forbes, that he was the attorney of his sister, Mrs. Williams.

ROBERT MORRISON.

Answered, sworn to, and subscribed before us, in the city of Havana, this June 18th, 1842.

JAMES S. CALHOUN, [SEAL.]
ALF. L. ALFSSON. [SEAL.]

Copy.—A.

Amount of bill on London on account of Messrs. Carnochan & Mitchel, Savannah, protested - - -			£2,812 10
Equal in dollars - - - - -			$12,487 .4
Damages at present ruling in Havana, and until further arrangement, 10 p. c. - - - - -			1,248 .8
Int. at 5 p. c., 2 years and 10 months - - -			1,946
			$15,682 .2
Due of the above to heirs of Thos. Forbes, one-half -			7,841 .1
In ⅓ each	2,613 71		
	2,613 71		
	2,613 71		
			7,841 .1

Received from Colin Mitchel an obligation to hold, at the order of Mess. Wm. Duff & Co., of Nassau, New Providence, the sum of four thousand dollars, and in cash for my own use the sum of one thousand

two hundred and twenty-seven dollars 42 cents, which, with two thousand six hundred and thirteen dollars 71 cents remaining in his hands for the use and benefit of my sister Mary Sophia, wife of T. B. Williams, esq., together form the above sum of seven thousand eight hundred and forty-one dollars and one rial, being one-half of protested bill as there expressed, drawn by the said Colin Mitchel on account of Messrs. Carnochan & Mitchel, Savannah.

(Signed) W. H. FORBES.

HAVANA, 11 *October*, 1823.

(Endorsed.) HAVANA, *Island of Cuba.*

This is the document alluded to in the foregoing answers marked A.

JAMES S. CALHOUN.

June 18, 1842. A. L. ALFSSON.

(The whole endorsed as follows:)

"Offered and read in evidence before the court of appeals by stipulation of parties, January 15, 1844."

No. 2.

Extract of a letter from James Innerarity to Jas. E. Bettner, dated Mobile, March 6, 1843.

John Forbes, William Henry Forbes and myself, were near neighbors in Cuba. I had purchased from John a piece of land for a coffee estate, part of a large tract that he held in 1821. W. H. Forbes came from the Bahamas and purchased another piece of the same tract. Our respective houses not being a mile apart, we saw each other very often, and were frequently all three in company at John Forbes' house. The greatest cordiality reigned between the uncle and nephew, until I returned to this country on business in Nov'r, 1822. In May, 1823, I went back to Cuba. Being at W. H. Forbes' house one day, he questioned me regarding some money I had received from Mr. Colin Mitchel, of Havana, on account of the often mentioned protested bill. I told him I had received a portion of what was owing from my uncle Wm. Panton's estate, on that bill as attorney for his heirs. He then stated that he had authority to claim what was due on it to his father's heirs, and intended soon to go to Havana and claim it. In a few days afterwards he went there, and on his return told me he had received the whole amount owing on it, to himself, his brother and sister, and that matter was so far closed, as all the previous payments had been settled for by John Forbes, which accorded with what the latter had told me in 1821, when he settled with me for the payments that had been previously made on the share of the Panton family. W. H. Forbes never dropped an expression to me that those lands had been sold by his uncle surreptitiously or fraudulently; and that such a pretence should be set up at this late day, twenty-four or five years after the fact, and nearly twenty years after the death of John Forbes, surprises me not a little. Jno. Gordon himself, with whom I had sundry conversations regarding his late uncle, never advanced such a pretension to me. This is the sub-

stance of my knowledge of those matters, and I am perfectly ready to testify to it when called upon.

I have the honor to be, with great respect, dear sir, your most obe't serv't,

JAS. INNERARITY.

JAS. E. BETTNER, esq.

Mem.—This is read in evidence with the same effect as if James Innerarity had deposed to the facts therein stated.

W. ANDERSON.

Endorsed.—Read by defendants' counsel on the hearing of the appeal, and filed Jan'y 15, 1844.

B.

No. 3.

HAVANA, 8 *December*, 1819.

James S. Potts, esq.

DEAR SIR: On the 2d inst., whilst on a visit to this place, I had the pleasure of receiving your letter of the 9th Sept., covering duplicate of the 18 Aug't. The remittance from Charleston I was obliged to dispose otherwise, but you would soon be in receipt of from £1,200 to £1,500 st'g from New York, through the hands of Mess. Stevens & Martin of that city. It is needless to go over the causes that induced me to divert these remittances alluded to from their original destination; it is sufficient to say, that they arose out of the unexpected turn of affairs in Europe, which operated on our plans in this quarter, and are likely to affect us for some time [to] come. My friend Mitchel has suffered, and is suffering, through the unwarrantable conduct of Mr. Hibberson, who seems dead to all feeling but that of self. I am, however, happy to think, that the evil will recoil on himself; and although some inconvenience has been felt on this side of the water, it is now over. The accommodation I have given him by my late bills on you for £5,000 st'g, will be replaced before it can be wanted, and I have the pleasure in the mean time of serving a friend without inconvenience to myself. My own wants will be confined, for which it is probable I will draw, unless I get a remittance from New Orleans before I leave Havana. Our exchange at present is 10 p. 100, which is an object, as by the month of March, when my recoveries will be in full operation, and my crop coming in, I expect to procure bills at 5 p. 100, or be able to remit through the United States to still more advantage.

You do me no more than justice in presuming that I can, in no event, allow you to be a loser by acting as my banker, feeling as I do the advantage of your unceasing attention to my little matters, and knowing that your funds are always at my command. Let it therefore be as you wish, 4 p. 100 on my deposits, and if I should ever overdraw, a circumstance rather improbable, but still not impossible, I am willing to allow you 5 p. 100. The business of the Apalachicola lands has not yet been terminated, in consequence of the non-ratification of the treaty, but I

expect we shall conclude on something soon after the meeting of Congress. In the mean time, if I can lay my hands on the papers, I will subjoin a note of recoveries, which I am under the necessity of requesting you will have the goodness to pay back to Mr. John Carnochan, being the share reserved for the Innerarities, who did not chose to sell for this sum; you will please take an acknowledgement.

I have convinced Mr. Mitchel, that the commission alluded to is a proper charge against the persons interested in the land purchase, as their bargain was to give me bills on London here at par. I therefore could have nothing to do with the commissions charged on the management of their funds. I certainly wish that the question of droits were laid to rest, but if the decision extends further than the sum appropriated and remitted for that specific purpose, I am of the opinion that you ought to refer them to me.

I remain, very truly, yours,

——— ————.

Memorandum of sums to be paid John Carnochan, esq'r, on account of reserves made by James and John Innerarity, of the $\frac{1}{15}$ of the Apalachicola lands:

Rec'd in May, 1818 - - - - -	£375,
Do. in December, 1818 - - - - -	375,
Do. in December, 1819 - - - - -	375,

Say one thousand one hundred and twenty-five pounds stg.

Besides which, you will have to deduct from the acceptances due in December, 1820 and 1821, two similar sums at these distinct periods.

The above being an important letter, and as but a partial extract of it was given of it, with the other extracts enumerated in the marginal memorandum signed by me, I have concluded to give the foregoing in full, as it stands on the letter book.

EDM'D DE PESTRE.

It is agreed that the above copy of the letter above referred to be read in evidence in the case depending in the court of appeals of Florida, between John Innerarity, administrator of John Forbes, of the one part, and the Trustees of the Apa. Land Company, of the other part, the case taken by appeal from the latter from the Escambia supe. court.

W. ANDERSON, *Sol'r for appellee.*
THOMAS BALTZELL, *for appellant.*

(Endorsed).—Read in evidence by defendant's counsel, on the hearing of the appeal, and filed Jan'y 15, 1844. B.

JOHN INNERARITY, adm'r of Forbes,
vs.
The Apalachicola Land Company.
} No. 4.—Court of appeals.

Copy from exhibits filed in the papers, but omitted by the clerk.

$200. PENSACOLA, 30 *January*, 1839.

Thirty days after sight of this my second of exchange, first of the same tenor and date being unpaid, please pay to George W. Barkly, esq., or order, two hundred dollars, for value received, as per advice from

Your mo. ob't serv't,

JOHN INNERARITY.

Benj'n Marsh, esq., corner of Jacob and Ferry sts., New York.

Accepted.—B. MARSH, *April* 18, 1839.

Exch. for $200. PENSACOLA, 1 *April*, 1839.

Thirty days after sight of this my first of exchange, second of the same tenor and date unpaid, please pay to the order of George W. Barkly, esq., two hundred dollars, for value received, as per advice from

Your most ob't serv't,

JOHN INNERARITY.

B. Marsh, esq., corner of Jacob and Ferry sts., New York.

Accepted.—B. MARSH.

Exchange for $200. PENSACOLA, 1 *May*, 1839.

Thirty days after sight of this my first of exchange, second of same tenor and date unpaid, pay to the order of George W. Barkley, esq., two hundred dollars, for value received, as per advice from—

Your ob't servant,

JOHN INNERARITY.

It is agreed that the above copies of drafts, if omitted in the record sent up of the case mentioned aforesaid, and now depending in the court of appeals, be held and regarded as part of the same, and has having been omitted by mistake. It is further agreed, that said drafts or bills of exchange were taken up by Thomas M. Blount, esq., by directions of complainant, John Innerarity, who agrees to their allowance in this case, and to their being credited on the decree as proper and rightful vouchers.

W. ANDERSON,
Sol'r for complainant and appellee.
THOMAS BALTZELL,
for Apa. Land Co.

Pensacola, 25 Sept., 1843.

(Endorsed.)—"Filed 3 Jan'y, 1844. R. T. B., *C.*"

Read in evidence and filed Jan'y 15, 1844, on hearing of the appeal.

B.—Decree of Leon superior court, 1830.

COLIN MITCHEL, et al., vs. THE UNITED STATES. } No. 5.

And this cause, thus standing ready in court for a hearing, a day was by this court appointed, by consent of parties, for the hearing thereof,

on which day, being the 22d July, 1830, the said cause coming on to be heard—present, the district attorney, R. K. Call, and Richard C. Allen, on behalf of the United States, and Joseph White, on the part and on the behalf of the petitioners; on the said last mentioned day, and on several successive days, the said cause was heard on the petition, answer, exhibits, and other proofs taken and filed in this cause, and was debated by counsel; and after hearing what could be alleged on both sides, the court took time to advise on the same.

And now, having fully and maturely considered the several matters and things contained in the said petition, answer, and exhibits, and it appearing to the court that by virtue of the sixth section of the act of Congress, entitled An act supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida, this court is authorized to receive and adjudicate certain claims to land in Florida, embraced by the treaty between Spain and the United States, of the 22d of February, 1819; that, by the terms of said treaty, the grants of lands to be ratified and confirmed by the United States, are grants of land made by his Catholic majesty, or by his lawful authorities, and to be ratified and confirmed to the same extent, that the same grants would be valid if the territories had remained under the dominion of his Catholic majesty; and it appearing to the court that the claim to land in the present petition is founded on a purchase from certain tribes of Indians, of a large tract of vacant and uncultivated land lying mostly in East Florida, made between the years 1804 and 1811 by the house of Panton, Leslie & Co., and John Forbes & Co., through whom the petitioners claim by assignment, that certain deeds of sale and cession were executed by the said Indians to the said grantees, with the consent and approbation of Don Vincente Folch y Juan, civil and military commandant of Pensacola; which officer also made and executed deeds of confirmation of the same. And it appearing to the court that, by the general tenor and provisions of the laws of Spain, and particularly by law 14, title 12, book 4, of the collection of the laws of the Indies, the kings of Spain claimed and held the dominion and property over all the waste lands and soil of their American colonies; of which character was the land now in controversy previous to the Indian sales now in evidence. And it appearing to the court that the Indians had not, by virtue of any title recognized to belong to them by Spain, such an interest or estate in the lands as such, them to sell, and convey it away to these petitioners in full property, in defeasance of the right of Spain; that therefore the grants by deeds of sale from the Indians attempted to be made, conveyed no valid or legal title to the original grantees, either under the forms of the treaty of 22 February, 1819, or independently of said treaty, but was null and void. And it appearing that no grant has been shewn of the lands claimed by the king of Spain, and that the acts and things done or executed by Governor Folch, of Pensacola, and by the authorities of Cuba, in relation to the said purchase from the said Indians, and to the deeds made in pursuance thereof, if designed to operate by way of confirmation on said deeds of sale, were ineffectual to

render to those deeds valid and legal, or to confirm the titles they pretended to convey, they being titles unknown to the laws of Spain; that if designed to convey a substantial grant or concession of lands to the original parties, they were invalid, illegal, and ineffectual; in this, for that the pretended grant was made without regard to, or observance of, the provisions of the laws and ordinances of Spain applicable to grants and concessions of land, and particularly of the royal ordinance of 15 October, 1754, and of the laws of the Indians to which it refers; and for that they were the acts and doings of persons not authorized to grant and distribute lands under the royal order of 22 October, 1798, which then constituted the law in relation to granting and distributing all kinds of lands in West Florida. And it moreover appearing to the court that these petitioners have altogether failed to establish that the lands claimed in their petition was by grant made by his Catholic majesty, or his lawful authorities, and was such a grant as would be valid if the territories had remained under the dominion of his Catholic majesty. Whereupon the court doth think fit, and so order and decree, and accordingly it is this day of by this superior court of the United States for the district of Middle Florida, and by the power and authority of the same, ordered, adjudged, and decreed, that the claim to the land and premises in the petition mentioned and sued for, be held, and be invalid and illegal, and the said petition dismissed.

No. 6.

Be it known to all whom it may or doth concern, that I, John Innerarity, of the city of Pensacola, administrator of the estate of the late John Forbes, duly appointed and qualified, do hereby make, constitute, and appoint Thomas M. Blount, esquire, the president of the Bank of Pensacola, my true and lawful attorney, to receive from the trustees of the Apalachicola Land Company, in the city of New York, any sum or sums of money on account and in part payment of the mortgage on the said lands, executed in favor of the said John Forbes at the Government office of West Florida in this city, on the thirteenth day of September, one thousand eight hundred and twenty, for the sum of twenty-five thousand dollars principal, (and the corresponding interest, until full and final payment,) and to give such receipt or receipts, release or releases, therefor, as may be deemed requisite to exonerate the said trustees from so much of the said mortgage as may be paid by them on account, and in part payment of the said incumbrance, to my aforesaid attorney, Thomas M. Blount, esquire, hereby pledging, binding, and obligating myself to indorse a receipt for such sum or sums as may be thus paid by them in part payment on the original deed of mortgage existing in the public protocol of the Spanish archives in this city, or to give any other release on account of such partial payment as may be deemed good, valid, and sufficient to the extent thereof, hereby ratifying and confirming whatever my said attorney may do in the premises.

In faith and testimony of all which, I sign and seal the present letter or power of attorney, in the presence of the subscribing witnesses, in the

city of Pensacola, this sixteenth day of August, one thousand eight hundred and thirty-nine.

JOHN INNERARITY. [SEAL.]

Witness: M. CRUPPER.

TERRITORY OF FLORIDA, *Escambia county:*

This day John Innerarity personally appeared before me, M. Crupper, clerk of the court of the county aforesaid, and acknowledged that he had executed the foregoing instrument of writing for the uses and purposes therein mentioned. I further certify, that the said John Innerarity is the duly and legally qualified administrator of the estate of the late John Forbes.

In testimony whereof, I have hereunto set my hand, and affixed the [L. S.] seal of the said court, at Pensacola, this 16 day of August, A. D. 1839.

M. CRUPPER, *Clerk.*

TERRITORY OF FLORIDA, *county of Leon, ss:*

Be it remembered, that on this 4th day of January, 1840, the foregoing instrument of writing was presented to me, the subscriber, clerk of the county court, for the county aforesaid, for record, and having the proper certificate of authentication thereon, I have duly recorded the same.

In testimony whereof, I have hereunto set my hand, and affixed my [SEAL.] seal of office, the date aforesaid.

D. McRAENY, *Clerk.*

Know all men by these presents, that I, Thomas M. Blount, attorney in fact of John Innerarity, esq., administrator of John Forbes, deceased, duly constituted by power of attorney, made and executed the sixteenth day of August, in the year one thousand eight hundred and thirty-nine, do hereby acknowledge to have this day received from George Griswold and Lewis Curtis, esquires, trustees of the Apalachicola Land Company, the sum of four thousand eight hundred and thirty-two dollars thirty-five cents, being the balance due upon a protested bill of exchange of Colin Mitchel's; which bill of exchange was given for the payment of the instalment due the eighth day of December, in the year one thousand eight hundred and twenty, on a certain mortgage executed by Octavius Mitchel, on an undivided moiety of the tract of land in Florida known as Forbes' purchase; which mortgage is dated the thirteenth day of September, in the year one thousand eight hundred and twenty, and set forth in the power of attorney before recited, and hereto annexed; and I do hereby acknowledge that the payment aforesaid is in full satisfaction of the amount due on the said protested bill of exchange. And I do further acknowledge to have received from the said George Griswold and Lewis Curtis, trustees as aforesaid, on the day of the date hereof, the additional sum of eight thousand five hundred and twenty-five dollars thirty-eight cents, in full payment of one-half of the last instalment due upon said mortgage, and in consideration of the said sums

amounting together to the sum of thirteen thousand three hundred and fifty-seven dollars seventy-three cents. I do hereby, in the name of the said John Innerarity, administrator as aforesaid, release and discharge the said mortgage for one-half of the amount appearing to be due thereon; and I do release and discharge, in the name of the said Innerarity, administrator as aforesaid, the mortgagor, and all persons interested in the said mortgaged premises, from any further payment on account of one-half of the amount due on said mortgage, the said mortgage being the one referred to in the annexed power of attorney. And I do hereby further promise and agree to release and discharge the said mortgage for the one-half upon the records at Pensacola, and in Gadsden county. And I do further acknowledge that the said amounts I have now received are ascertained to be the proportion of said mortgage belonging to the heirs of William Panton, deceased, and in full of all claims the said heirs may have under the said mortgage against Colin Mitchel, Carnochan & Mitchel, and all other purchasers of the said tract of land, or any other contract covered and embraced in said mortgage. In witness whereof, I, the said Thomas M. Blount, attorney in fact of John Innerarity, administrator of John Forbes, deceased, have hereunto set my hand, and affixed my seal, at the city of New York, the nineteenth day of September, in the year one thousand eight hundred and thirty-nine.

THOS. M. BLOUNT, [SEAL.]
Att'y in fact of John Innerarity, adm'r of John Forbes, deceased.

In presence of—

STATE OF NEW YORK, *City and county of New York, ss:*

By this public instrument, be it known to all whom it may concern, that I, William H. Maxwell, commissioner in and for the State of New York, duly commissioned by the Governor of the Territory of Florida, (by virtue of an act of the Legislature of the said Territory, entitled "An act to authorize the appointment of commissioners, &c., passed January the 24th, 1831, and therein and thereby authorized and empowered 'to take the acknowledgment of any deeds, contract, letter of attorney, mortgage or conveyance, of any lands, tenements or hereditaments, lying or being in the territory of Florida, or any other writing under seal, to be used in said Territory, with full power and authority to administer oaths and affirmations, take depositions, &c.,) do hereby certify, that, on the nineteenth day of September, anno domini 1839, before me, the aforesaid commissioner, personally appeared Thomas M. Blount, well known to me to be the grantor named and described in the annexed deed, and in due form of law acknowledged he had signed, sealed, and executed the same as his free act and deed, for the uses and purposes therein mentioned as the attorney of John Innerarity.

In testimony whereof, I have hereunto set my hand and seal the day and year above written.

WM. H. MAXWELL,
Florida Commissioner.

TERRITORY OF FLORIDA, *county of Leon, ss:*

Be it remembered, that on the 4th day of January, 1840, the foregoing instrument of writing was presented to me, the subscriber, clerk of the county court for the county aforesaid, for record, and having the proper certificate of authentication thereon, I have duly recorded the same.

In testimony whereof, I have hereunto set my hand and affixed my seal of office, the date aforesaid.

D. McRAENY, *Clerk.*

TERRITORY OF FLORIDA, *county of Leon:*

I, John B. Keen, deputy clerk of Leon county court, do hereby certify, that the foregoing is a true copy of the original, of record in this office, pages 74, 75, and 76, book G.

In testimony whereof, I have hereunto set my hand and affixed my [SEAL.] seal of office, this 18th day of January, 1844.

D. McRAENY, *Cl'k.*
By JNO. B. KEEN,
Dep. Clerk.

(Endorsed as follows.)—Read in evidence on the hearing of the appeal by compl'ts counsel, and filed January 18, 1844.

BRONSON, *Judge.*

No. 7. (Original in Spanish filed with translation, as follows:)

Translation.

[Stamp 64 reals.]

Receipt.—In the city of Matanzas, on the 16th of June, in the year 1824, before me, the notary, and witnesses, appeared Don William Henry Forbes, Don Octavius Mitchel, the latter as representative and attorney of Don Colin Mitchel, his brother, an inhabitant of Havanna, both of the appearers belonging to this jurisdiction, and residing in this city, and to me known; and the former declared, that he acknowledges having received, as executor and heir of his deceased father, from Don Octavius Mitchel, for account of his brother, Don Colin, the following sums: 2,613 dollars and 71 cents, which belonged to him for his part of this proportion of his inheritance; an equal sum to the foregoing, belonging in the same manner to his brother, Don John Gordon; and another like sum which, for the same cause, results in favor of his sister, Donna Mary Sophia; which three sums of 2,613 dollars and 71 cents, each amount together to the total of (seven thousand eight hundred and forty-one dollars one real) 7,841 dollars 1 real, and are the amount of a protested bill of exchange, for the third instalment of the sale made of the lands situated on the Apalachicola river, to the aforesaid Don Colin Mitchel, as attorney of Mess. Carnochan and Mitchel, merchants, of Savannah, for which third instalment, with the damages (pramios) upon protest, and for the said sum I give these presents, renouncing proof, laws concerning payment, exception of money not counted, and others applicable to the case, and execute a formal receipt for his security in

the most sufficient form. In virtue whereof, he exonerates the said Mitchel from his responsibility for the same, consenting that this release be recorded, whenever it may be necessary.

To the validity whereof, he binds his present and future property, and that of the person whom he represents, with a clause of warranty which he considers as herein inserted for its fulfilment; and the above-mentioned Octavius Mitchel being present, as attorney of his brother, Don Colin, accepted for his behalf, this document, that he may make use thereof, in such manner and at such time as he may see fit.

In testimony whereof, they thus declared, through the medium of Don Francisco Bernardo Stonor, public interpreter, and signed with him, Don Joses and Don Manuel Suim de la Prita, and Don Antoni Casimier Mendez, inhabitants present, being witnesses.

W. H. FORBES,
OCTAVIUS MITCHEL,
FRAN'CO BERN'DO STONER.
Before me, LUIS LOPEZ VILLACIENCIO.

This is a true copy of the original, which is in my charge, among the records to which I refer, and at the request of the party, I have caused this copy to be made.

Matanzas, the ninth of February, in the year one thousand eight hundred and thirty-seven.

(Notarial signet,) ANTONIO CASIM'R MENDEZ.

We, the notaries of our Lady, the Queen, (whom God preserve,) who subscribe our names, and affix our signets hereto, certify and attest, that Don Antonio Coismino Mendez, by whom the foregoing copy of receipt, appears to be authenticated, is a notary of her majesty, and holds the office of public notary of Marine, and consulado, register of mortgages and judicial accomptant, and so styles himself; that he is an officer, faithful, lawfully appointed, and desirous of confidence, and exercises said employment with general approbation; and that as well to this as to similar documents of his, full faith and credit always have been, and are given, both in and out of court.

In testimony whereof, we give these presents, at the city of San Carlos de Matanzas, as the place of our residence, in the always faithful Island of Cuba, on the tenth day of the month, in the year one thousand eight hundred and thirty-seven.

Signet, FRANC'O DE MIHOURA,
Signet, MANUEL ZAMBRANE,
Signet, JOSE REGUE Y MELLO.

"The above signatures are authenticated by the certificate of the American consul, Lewis Shoemaker, dated Feb. 10, 1837."

(Attached to original.)—Consulate of the United States of America, Matanzas. I, Lewis Shoemaker, consul of the United States of America at this port, and residing within the same, do certify, that Francisco de Mihoura, Manuel Zambrana, and Jose Regue y Mello, whose names are subscribed to the annexed instrument, are notaries public in this city,

to all whose acts, as such, full faith and credit are and ought to be given, as well in all courts as thereout.

Witness my hand and seal of office, this tenth day of February, 1837.

[SEAL.] LEWIS SHOEMAKER, *Consul.*

(Endorsed as follows.)—Offered by defendant's counsel, and read in evidence, by consent of parties, on the hearing of the appeal, and ordered to be filed by the court as of the 18th January, 1844.

BRONSON, *Judge.*

And on the 4th day of January, A. D. 1844, the appellants, by their counsel, filed in our said court of appeals their assignment of errors, which is in the words and figures following, to wit:

The Trustees of the Apalachicola Land Company,
versus
John Innerarity, administrator of John Forbes. } Ass't of errors.

The appellants allege that the court below erred—

1st. In decreeing interest at the rate of six per cent., and decreeing it at all, or to the extent of the decree.

2ndly. In refusing the payment to Wm. H. Forbes, admitted in the answer of complainant.

3rdly. In rejecting the payment to Thomas M. Blount.

4thly. In refusing claim for overpayments omitted by John Forbes.

5thly. In refusing to allow appellants for expense of defence of suits, &c., and for loss of Fort Saint Marks, &c. &c.

THOMAS BALTZELL, *for app'ts.*

(Endorsed.)—"Filed Jan'y 4, 1844. R. T. B., *C.*"

And afterwards, to wit, at a court of appeals for the Territory of Florida, continued and held at the court house in the city of Tallahassee, on Monday, the 15 day of January, 1814, the following order was entered in said cause:

Curtis and Griswold, trustees, &c., appellants,
vs.
John and James Innerarity, appellees.

This cause was this day partly heard upon the transcript of the record of the judgment aforesaid, and the arguments of counsel, and is continued till to-morrow for a further hearing thereof.

And afterwards, to wit, at a court of appeals for the Territory of Florida, continued and held at the court-house in the city of Tallahassee, on Tuesday, the 16th day of January, A. D. 1844, the following order was entered in said cause:

Curtis and Griswold, trustees, &c., appellants,
versus
John and James Innerarity, appellees.

This cause was this day further argued, and continued till to-morrow for further hearing.

And afterwards, to wit, at a court of appeals for the Territory of Florida, continued and held at the court-house in the city of Tallahassee, on Wednesday, the 17 day of January, 1844, the following order was entered in said cause:

Curtis and Griswold, trustees, &c., appellants,
versus
John and James Innerarity, appellees.

This cause was further argued this day, and continued till to-morrow for further hearing.

And afterwards, to wit, at a court of appeals for the Territory of Florida, continued and held at the court-house in the city of Tallahassee, on Thursday, the 18 January, 1844, the following order was entered in said cause:

Curtis and Griswold, trustees, &c., appellants,
vs.
John and James Innerarity, appellees.

This cause was this day further argued, and continued till to-morrow for further hearing.

And afterwards, to wit, at a court of appeals for the Territory of Florida, continued and held at the court-house in the city of Tallahassee, on Friday, the 19th day of January, A. D. 1844, the following order was entered in said cause:

Curtis and Griswold, trustees, &c., appellants,
vs.
John and James Innerarity, appellees.

This cause was this day fully heard upon the transcript of the record of the judgment aforesaid, and the arguments of counsel, but because the court is not yet advised of its judgment to be given in the premises, time is taken to consider thereof.

And afterwards, to wit, at a court of appeals for the Territory of Florida, continued and held at the court-house in the city of Tallahassee, on the 7th day of February, A. D. 1844, the master in chancery, to whom had been referred the accounts in this cause, made the following report thereon:

Court of appeals, January term, 1844.

John Innerarity and others,
vs.
Curtis and Griswold, trustees of the Apalachicola Land Co.

In conformity with the direction of the court, I have made the requisite calculations referred to me in this case, and state the results as follows:

To one-half of the draft Colin Mitchell on London, due the 8 December, 1820 - - - - $6,250 00

Deduct proportion of the sum to come out of this instalment, on ac. of the Innerarity shares, to wit, £93 15s. stg., equal to - - - - -		416 25
		$5,833 75
Add ten per ct. for damages on the protested bill -		583 37
		$6,417 12
Interest, at 5 per ct., on this sum, from 8 Dec'r, 1820, to 31 May, 1823, 2 y. 5 m. 23 d. - - -		795 88
		$7,213 00
Deduct payment made 31 May, 1823 - - -		2,680 81
		$4,532 19
Add interest, at 5 per ct., on this am't, to 15 Feb'y, 1825, when the next payment was made, 1 y. 8 m. 29 d. -		386 70
		$4,918 89
Deduct payment made 15 Feb'y, 1825 - - -		2,080 87
		$2,838 02
Add interest on this amount from 15 Feb'y, 1825 to 7th Feb'y, 1844, 18 yrs. 11 ms. 23 ds. - - -		2,694 34
		$5,532 36
Then charge defts. with 2d instalment of the mortgage, viz: - - -	$12,500 00	
Deduct proportion of the sum to come out of this, on ac. of the Innerarity shares, £281 5s., eq. to - - -	1,248 75	
	$11,251 25	
Add interest, at 5 per ct., on this am't, from 9th March, 1822, to 7 Feb'y, 1844, 21 yrs. 10 ms. 29 ds. - - -	12,325 93	
	$23,577 18	
Deduct paid by Mr. Blount in N. York -	619 00	
Balance on 2d instalment of mortgage -		22,958 18
		$28,490 54

All of which is respectfully reported by—

J. B. BROWN, *Master in Chancery.*

And afterwards, to wit, on 12 Feb'y, 1844, the following addition to said report was made by Bronson, judge:

Am't bro't down - - - -	28,490 54
Add interest for 5 days at 5 per cent. on original am'ts, i. e. on 2,832 02, and on 11,251 25—14,089 27 - -	9 65
	$28,500 19

Feb'y 12, 1844.

BRONSON, *Judge.*

And afterwards, to wit, at the court of appeals for the Territory of Florida, continued and held at the court house in the city of Tallahassee, on Monday, the 12 day of February, 1844, the following final decree was rendered in said cause:

JOHN INNERARITY and James Innerarity
vs.
LEWIS CURTIS and George Griswold, trustees of the Apalachicola Land Company. } Decree.

This cause coming on to be heard upon an appeal from a decree of the superior court, western district, sitting as a court of chancery; and after hearing the arguments of counsel, to wit, Mess. Anderson and Westcott for complainants, and Mr. Baltzell for defendants; and after hearing certain depositions and documentary evidence offered and read in evidence by the defendants' counsel, and stipulation of the parties; and after examining the record in this cause, and it appearing that there is error in the decree of the superior court of the western district, from which the said defendants have appealed: Therefore, it is ordered, adjudged, and decreed, that the said decree of the court below, made at the November term of said court in year 1841, be, and the same is hereby, reversed, annulled, and altogether held for nothing; and this court, proceeding to render such judgment or decree as the court below ought to have rendered, in pursuance of the statute in such case made and provided, doth now order, adjudge, and decree, that the amount now due to the complainant upon the mortgage given by Octavius Mitchel to John Forbes, bearing date the ninth day of September, 1820, and particularly mentioned and set forth in the pleadings in this cause, is twenty-eight thousand five hundred dollars and nineteen cents, to be paid by the said defendants, with interest thereon at the rate of eight per cent. per annum from this date. And it is further ordered, adjudged, and decreed, that the defendants, and all persons claiming by, through, or under them, by virtue of any title accruing since the commencement of this suit, be, and they are hereby, declared to be barred and forever foreclosed, of and from all right and equity of redemption of, in, and to the mortgaged premises mentioned and described in the mortgage aforesaid, and particularly referred to in the complainants' bill of complaint, unless the defendants shall, within six months from this date, pay to the said complainants, or either of them, or to their solicitor, Walker Anderson, esquire, the afore-

said sum of $28,500 $\frac{19}{100}$, together with interest thereon at the rate of eight per cent. per annum from this date until paid, and also the costs of this suit in the court below, to be taxed up to the time of the appeal; and upon the payment of the sum aforesaid, together with the interest and costs, within the period above limited, then this decree of foreclosure shall be held to be null and void, and the mortgage aforesaid thereby satisfied and cancelled. But in case of default in making the payment of the debt, interest, and costs aforesaid, within the said term of six months from this date, then it is further ordered, adjudged, and decreed, that this decree of foreclosure shall become absolute, and thereupon the said mortgaged premises mentioned and described in the complainants' bill of foreclosure and deed of mortgage shall be sold by virtue of this decree, by and under the direction of the marshal of this court, at public auction, at the court house in the city of Tallahassee, after having first given public notice of such sale by advertisement, to be published in some newspaper in the city of Tallahassee, and also in some newspaper published in the city of New York, for six weeks successively. And it is further ordered and decreed, that out of the proceeds of said sale the marshal, after first deducting his fees and disbursements incident to said sale, to be taxed by the clerk of this court, or any judge thereof, shall pay to the complainants, or their solicitor aforesaid, the said sum of $28,500 $\frac{19}{100}$, and the interest thereon, and also their taxed costs aforesaid in the court below; and the balance, if any, the marshal shall pay into the registry of this court, to await the further order of the court.

And it is further ordered and decreed, that after the payment of the purchase money by the purchaser at the sale aforesaid, the marshal execute a proper conveyance to the purchaser in pursuance of such sale. And it is further ordered and decreed, that the parties each pay their own costs of this appeal.

And afterwards, to wit, at a court of appeals of the Territory of Florida, continued and held at the court house, in the city of Tallahassee, on Saturday, the 24th day of February, A. D. 1844, the following order was entered in said cause:

JOHN INNERARITY and James Innerarity
vs.
LEWIS CURTIS and George Griswold, trustees of the Apalachicola Land Company.

The motion heretofore made by the appellees for an appeal to the Supreme Court of the United States, having been considered, which motion is filed in the words following:

The said Curtis and Griswold, trustees, appeal on the following grounds:

1. Because interest was allowed when it should only have been from the filing of the bill in chancery.

3. Because the payment made to Thomas M. Blount was rejected, and not allowed by said court, which said payment ought not to have been rejected, but allowed.

4th. Because only one payment of £375, directed to be retained by John Forbes, was allowed by court, when the parties were entitled to other and further allowances.

5th. Because costs should not have been awarded against the trustees, but in their favor.

It is ordered that an appeal be granted to said appellees upon their executing bond in the sum of $5,000, with sufficient security, to be approved by the judge of the middle district, conditioned as the law requires; and that the said parties have thirty days from this time within which to give and present their appeal bond for approval.

And thereupon the said complainants in said cause, in case said defendants appeal from said decree, or any part thereof, also appeal from so much of said decree—

1st. As does not allow complainant but five per cent. interest, and he alleges he should have been allowed eight per cent., or at least six per cent., and that the said court erred in not allowing the same.

2nd. As does not allow him the *decima*, or ten per cent. for his damages, by reason of his being obliged to resort to legal process to enforce payment of said debt, allowed by the Spanish law under which the said 5 per cent. only is allowed as interest.

3d. As does not allow him the difference of exchange 15 per cent., or other proper amount, the rate of premium between Pensacola and Havana and London, on the two instalments of the original purchase-money received by the mortgage sought to be foreclosed by said suit.

4th. As does allow the alleged payment to W. H. Forbes mentioned in the opinion and decree of the court, and interest thereon to said defendants.

5th. As does allow £375 deduction mentioned in the said decree, and interest thereon to said defendants.

Which appeal being made and filed in open court, it was ordered by the court to be entered of record in said case, and certified to the Supreme Court of the United States, with the appeal of said defendants.

And afterwards, to wit, on the 23 April, A. D. 1844, came the appellants, by the[ir] attorney, and filed in this cause the following power of attorney, and bond made by virtue thereof; which are respectively in the words and figures following, to wit:

[*Letter of attorney.*]

Whereas, in a certain cause pending in the court of appeals, in th Territory of Florida, wherein John Innerarity, administrator of John Forbes, is plaintiff, and Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company, are defendants, the said court has lately made and pronounced a judgment or decree against the said defendants; from which judgment or decree the said defendants are desirous to appeal to the Supreme Court of the United States. Now, therefore, know all men by these presents, that we, the said Lewis Curtis and George Griswold, the said defendants, have nominated, constituted, and appointed, and by these presents do nominate, constitute, and appoint,

Thomas Baltzell, of Tallahassee, in the Territory of Florida aforesaid, our true and lawful attorney, for us, and in our names, to enter and prosecute an appeal from the judgment or decree aforesaid to the Supreme Court of the United States; and also for us, and in our names, to make, seal, and deliver, such appeal bond or bonds as may be required by law, and the course and practice of the court, for the purpose of entering and prosecuting such appeal; and generally for us, and in our names, to do all other necessary legal acts in the premises, for the purposes aforesaid, as fully as we could do personally.

In witness whereof, we have hereunto set our hands and seals, this fourth day of March, in the year of our Lord one thousand eight hundred and forty-four.

LEWIS CURTIS, [L. S.]
GEO. GRISWOLD. [L. S.]

Sealed and delivered in presence of—
J. D. B. CURTIS,
H. H. WARDEN.

STATE OF NEW YORK,
[L. S.] *City and county of New York, ss:*

By this public instrument be it known, to all whom it may concern, that I, William H. Maxwell, commissioner in and for the State of New York, duly commissioned by the Governor of the Territory of Florida, (by virtue of an act of the legislature of said Territory, entitled "An act to authorize the appointment of commissioners, &c., passed January 24th, 1831," and therein and thereby authorized and empowered "to take the acknowledgment of any deed, contract, letter of attorney, mortgage, or conveyance of any lands, tenements, or hereditaments, lying or being in the Territory of Florida, or any other writing under seal, to be used in said Territory, with full power and authority to administer oaths and affirmations, take depositions, &c,") do hereby certify, that on the sixth day of March, anno domini 1844, before me, the aforesaid commissioner, personally appeared Lewis Curtis and George Griswold, well known to me to be the constituents in the annexed power of attorney named and described, and in due form of law acknowledged they had signed, sealed, and executed the same as their free act and deed, for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and seal, the day and year above written.

WM. H. MAXWELL,
Florida commissioner, New York.

(Endorsed.)—Filed 23 April, 1844.

N. P. B., *D. C.*

[*Appeal bond.*]

Know all men by these [presents,] that we, Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company, and James E. Bettner and Thomas Baltzell, are held and firmly bound unto John

Innerarity, administrator of John Forbes, in the penal sum of five thousand dollars; to the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Signed and sealed this twenty-second day of April, in the year of our Lord one thousand eight hundred and forty-four.

The condition of the above obligation is such, that whereas the said Curtis and Griswold, trustees as aforesaid, have prayed for and obtained an appeal to the Supreme Court of the United States, at their next term, from a decision of the court of appeals of the Territory of Florida, made at their January term, 1844, by which said trustees were adjudged and decreed to pay the said Innerarity, administrator as aforesaid, the sum of twenty-eight thousand five hundred dollars nineteen cents, with interest from the date of the decree and costs. Now, if the said Curtis and Griswold, trustees as aforesaid, shall prosecute their appeal with effect, and answer all damages and costs, if they fail to make their plea good, then this obligation to be void, else to be and remain in full force and virtue.

LEWIS CURTIS, [SEAL.]
By THOMAS BALTZELL,
His attorney.
GEORGE GRISWOLD, [SEAL.]
By THOMAS BALTZELL,
His attorney.
THOMAS BALTZELL, [SEAL.]
JAS. E. BETTNER, [SEAL.]

"Approved:
S. J. DOUGLASS,
Judge C't Appeals"
N. P. B. D. C.

(Endorsed:) Filed 23 April, 1844.

I, Richard T. Birchett, clerk of the court of appeals for the Territory of Florida, do hereby certify, that the foregoing pages, numbered from (1) one to one hundred and ninety-five, inclusive, contain a true transcript of the records of the proceedings and judgment in a certain cause lately depending in said court of appeals, on appeal from a decree of the superior court of the western district of Florida for the county of Escambia, sitting in chancery, wherein John Innerarity and James Innerarity are complainants, and Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company, are defendants, as fully and completely as the same appear among the records of said court of appeals.

In testimony whereof, I do hereto set my hand, and affix the seal of [L. S.] said court of appeals, at Tallahassee, on this first day of September, in the year of our Lord one thousand eight hundred and forty-four.

R. T. BIRCHETT, *Clk.*
By N. P. BEMIS, *D. C.*

Filed, Feb. 6, 1845.